

# **LOCAL DEVELOPMENT PLANS**

## **Examining Local Development Plans**

### **Procedure Guidance**

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# Introduction

1. This document is mainly concerned with the procedural aspects of dealing with the examination of local development plans (LDPs) and replaces the Planning Inspectorate Wales publication '*A Guide to the Examination of Local Development Plans*'. It also incorporates and supplements the advice set out by the Welsh Assembly Government with regard to the procedure for advertising focussed changes issued on 10 June 2009<sup>1</sup> and touches briefly on the role of key participants in preparing LDPs. Pre-submission matters are also detailed in Local Development Plans Wales: Policy on Preparation of LDPs, December 2005<sup>2</sup> and in the Local Development Plan Manual, June 2006<sup>3</sup>. For ease of reference, the tests of soundness are contained in the Appendix to this document. A model form and model note for the gathering of representations at deposit stage is provided on the Inspectorate's website.<sup>4</sup>

2. This guide is aimed at all those involved in the process of examining an LDP, including Inspectors who will seek to work within the parameters it sets out. Whilst the statutory basis for the examination is provided in section 64 of the Planning and Compulsory Purchase Act 2004 (the 2004 Act)<sup>5</sup>, the detailed procedural aspects of the examination are not covered in any legislation. This affords some flexibility in administering the examination process to accommodate the needs of all those involved. However, Inspectors will 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 to participants for pre-hearing meetings.<sup>6</sup>

3. If anything in this guidance is unclear or should anyone be unsure how to handle any particular aspect of the examination process, the Local Development Plans team at the Planning Inspectorate in Cardiff will be pleased to provide further advice.<sup>7</sup>

## Overview

### *An efficient examination process*

4. Each local planning authority (LPA) will publish proposals for its LDP to enable the public and any interested party to make representations on it. LDPs should be concise and focussed documents which convey the

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<sup>1</sup> Circular Letter CL-01-2009: View at :

<http://wales.gov.uk/topics/planning/policy/circularletters/2009/cl0109/?lang=en>

<sup>2</sup> View at: <http://wales.gov.uk/topics/planning/policy/developplans/LDPWales?lang=en>

<sup>3</sup> View at: [http://wales.gov.uk/topics/planning/policy/developplans/ldp\\_manual?lang=en](http://wales.gov.uk/topics/planning/policy/developplans/ldp_manual?lang=en)

<sup>4</sup> View at: [http://www.planning-inspectorate.gov.uk/cymru/wal/index\\_e.htm](http://www.planning-inspectorate.gov.uk/cymru/wal/index_e.htm)

<sup>5</sup> View at: [http://www.opsi.gov.uk/acts/acts2004/ukpga\\_20040005\\_en\\_1](http://www.opsi.gov.uk/acts/acts2004/ukpga_20040005_en_1)

<sup>6</sup> In relation to the hearing start date, the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005 prescribe that at least 6 weeks notice should be given before hearings commence. See regulation 23 of 2005 Regulations. View at:

<http://www.opsi.gov.uk/legislation/wales/wsi2005/20052839e.htm>

<sup>7</sup> Please contact The Planning Inspectorate, Crown Buildings, Cathays Park, Cardiff, CF10 3NQ (Tel: 029 2082 3866/3892 or e-mail [wales@pins.gsi.gov.uk](mailto:wales@pins.gsi.gov.uk))

essential messages in a clear and engaging way. All LDPs should be subject to rigorous, purposeful editing and LPAs should avoid long detailed descriptions and unnecessary repetition.

5. The LDP placed on deposit should not tell the story of how the plan was prepared. Nor should it contain a lengthy recitation of the legislative background. Such background material can help people understand the process but, if included in the deposit LDP, will divert attention from the important messages in the Plan. Background material, including details of the outcomes of previous consultations should be part of the evidence base. What the deposit LDP should do is set out the LPA's vision and objectives for its area and the strategy, policies and land allocations that will achieve those objectives.

6. LPAs should avoid including evidence that does not inform the content of the plan. The guiding principle is that the evidence should be proportionate and the policies in the plan should flow from it rather than being collected retrospectively in an attempt to justify the plan. The examining Inspector will only delve deeply if the plan cannot be justified because the evidence seems to be absent, flawed or out-dated. The evidence base will be subject to scrutiny only to the extent of how adequate it is to justify what is in the plan.

7 When the LDP is submitted to the Assembly Government and the Inspectorate for examination the LPA will provide, as part of the Consultation Report, a summary of the main issues raised throughout the process of plan preparation; how these have been addressed in the submitted LDP; and its recommendations in response to representations received on the deposit LDP. There is no need for LPAs to prepare extensive statements or summarise every individual representation as copies must be supplied to the Inspector. The important point is that the critical issues raised through the plan preparation process are identified and briefly articulated. The LPA will also provide a statement of its suggested main examination issues. When identifying issues the LPA should not consider representations individually but look at the issues raised collectively by representors. It is essential that all this information is provided on submission so that the Inspectorate can meet its commitment to complete examination of each LDP within 12 months

8. The Inspectorate is committed to delivering the Inspector's Report within 12 months of the submission of an LDP for examination. For this to be achieved it is essential that LPAs are equipped to move swiftly into the examination process on submission, particularly making sure there is a complete evidence base. The Service Level Agreement (SLA) between the Inspectorate and LPAs requires a Programme Officer (PO) to be in place at the time of deposit. An Inspector will not be appointed until a PO is in place. It may not be necessary for the PO to be appointed on a full time basis at deposit stage but the assistance of an experienced PO will help LPAs prepare for submission and the examination.

### *Post deposit changes*

9. 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<sup>8</sup>. LPAs should rigorously assess an LDP before it is placed on deposit under Regulation 17 to ensure that it is a plan which they consider is sound, having regard to the tests set out in '*Local Development Plans Wales*' (LDP Wales)<sup>9</sup>. LPAs should carry out their own assessment of soundness and the conclusions arising from this exercise should be included in the evidence supporting the LDP. LPAs should address any significant issues at the pre-deposit plan preparation stage (LDP Regulations 14 & 15). The plan placed on deposit should be the plan the LPA intends to submit under Regulation 22 to the Inspectorate and at that stage the LPA should not be aware of any issues implying a need to change the plan before it is submitted for examination.

10. If the LPA has carried out the plan making process properly there should be no need to change the deposit LDP. However, changes in circumstances post deposit and representations received to the deposit plan may lead LPAs to consider that changes are necessary to ensure that the LDP is sound. Changes should be avoided and, if they are necessary, kept to a minimum. LPAs should consider the cumulative impact of any proposed changes on the plan and whether the sustainability appraisal (SA) needs to be revised. A significant number of changes may be an indication that the LPA needs to consider whether to return to the pre-deposit stage.

11. If the LPA considers that, in order to make the Plan sound, fundamental changes are needed which either affect the strategy or are so significant in scale or nature as to go to the heart of the Plan, it will need to give serious thought to how the Plan can be taken forward, if at all. Before suggesting such fundamental changes the LPA should consider the implications for the SEA/SA and the extent to which the need for such a change throws into doubt the overall soundness of the deposit plan. The need for fundamental change may suggest that the LPA should take a step back in the process and return to the pre-deposit stage.

12. LDP Wales and the LDP Manual require LPAs to submit a consultation report which includes its recommended changes in response to representations and to new information. The LPA must be satisfied that any such changes to the deposit LDP would not jeopardise its soundness. Given that the basis of the LDP process is that the LPA submits an LDP which it considers to be sound LPAs should ask themselves whether a change suggested by a respondent is necessary to make the plan sound. If the answer is no, then there is no need to suggest a change to the LDP. The Inspector's role is not to improve the Plan but to recommend only those changes needed to make the Plan sound.

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<sup>8</sup> See section 64(2).

<sup>9</sup> '*Local Development Plans Wales (Welsh Assembly Government, 2005)*'. View at: <http://wales.gov.uk/topics/planning/policy/developplans/LDPWales?lang=en>

13. The LDP Manual also requires the consultation database to indicate whether a compromise might be available<sup>10</sup>. In such cases, where the LPA disagree with the initial representation but have subsequently put forward an alternative change that is in their view needed to make the Plan sound, they must ensure that it is clear what change is being proposed. In all cases the LPA must set out clearly any change to the deposit LDP, including precise revisions to policy wording or supporting text. It may also be useful (as advised in the LDP manual) for LPAs and representors who have made substantial objections to produce a statement of common ground, setting out where they agree and disagree.

14. Representations at deposit stage may bring to light key pieces of evidence which, whilst not going to the heart of the plan, necessitate changes to satisfy the consistency, coherence and effectiveness tests. Any focussed<sup>11</sup> or significant changes should be set out in an addendum to the deposit plan which should be submitted with the LDP.

15. Focussed changes set out in an addendum should be subject to the same process of publicity and opportunity to make representations as the LDP. If the change would alter the thrust of a policy, extend the range of development that a policy would apply to, delete a policy or introduce a new policy, two very important considerations need to be borne in mind. First, the change must not undermine, or possibly undermine, the sustainability credentials of the plan. Second, is the change a matter that has been subject to adequate community engagement?

16. The consultation period should be 6 weeks and, in order that it does not delay the Examination, it should be carried out as early as possible. It should be made clear that comments should only address the suggested changes and that it is not an opportunity to add to previous representations or make new comments on parts of the LDP not subject to a suggested change. The need to advertise an addendum may mean that any pre-hearing meeting (PHM) will not be held in week 8 as set out in the procedural timeline (see Table 1) but might need to be delayed until week 10. This is because the Inspector will need to consider whether it will be necessary to explore the issues raised at a hearing, prepare draft agendas and invite participants to the PHM. The Inspector will take account of any representations relating to changes in the advertised addendum and will hear those that wish to appear at the hearing session.

17. The Inspector will make clear the status of (any) addendum and whether he/she will accept it as part of the submitted Plan at the Pre-Hearing Meeting (PHM). Provided the addendum has been the subject of consultation and revised SA (if necessary) it will be accepted as part of the submitted LDP. The LDP and addendum would be read together and be the starting point for considerations of soundness.

18. Any minor editing changes, including drafting and typographical errors should be set out in a separate schedule and submitted with the LDP. Minor editing changes need not be advertised and, provided the Inspector accepts that they are minor, they will be treated as part of the submitted

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<sup>10</sup> See section 7.6 'Preparations for Submission' of the LDP Manual for further details.

<sup>11</sup> Circular Letter CL-01-2009

LDP and not referred to in the Inspectors 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 submitted LDP, and would need to be treated as post-submission changes.

#### *Post submission changes*

19. The LPA should not propose changes after submission but changes required to make the plan sound and minor drafting and typographical errors may come to light. The Inspector may invite the LPA to suggest changes to address any concerns he/she may have with regard to soundness. Such changes and any suggested by the LPA may need to be advertised and/or subject to SA; the Inspector will advise the LPA if he/she considers this to be necessary.

20. The role of the appointed Inspector is to carry out an independent assessment of the overall soundness of the plan, including 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 coherence and effectiveness tests (i.e. soundness tests CE1 to CE4), Inspectors will not concern themselves with minor drafting or typographical errors. If minor editing changes are suggested by LPAs they should be included in a schedule to be appended to the Inspectors report. Such changes cannot be subject to a binding recommendation but may be endorsed in the report. Significant and minor changes should be set out in separate schedules.

#### *The examination*

21. The examination will centre on the issues identified by the Inspector having regard to the soundness tests. The Inspector will be assisted in this regard by the LPA's statement of suggested main issues.

22. Representations made in writing and at hearings are given equal weight. It is possible that an LDP could be examined solely by way of written representations with the Inspector corresponding with parties if and where necessary. In such a case there would be no need for a PHM. However, given the nature of LDPs it is likely that issues will be raised which would be best explored at a hearing. Details of how hearings will be conducted are set out later in this guidance but generally they will be informal discussions designed to explore the matters identified by the Inspector. Those who have sought changes to the plan and 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.

23. 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. Detailed guidance regarding exploratory meetings can be found in section 9.

24. 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 in relation to the soundness tests.

#### *Team working in the Inspectorate*

25. Depending on the complexity of a plan, the lead Inspector may be supported by other Inspectors, specialist advisors or planning officers. Inspectors' reports will be subject to peer review in order to achieve the highest possible level of consistency.

26. The Inspector will be allocated time according to the complexity of the LDP. Experience to date in England shows that the number of Inspector days required to examine a development plan document (DPD) varies according to a number of factors, including its complexity. In addition it has been found that the total number of days taken up by the hearing sessions determines the total length of the examination process. For the purposes of this guidance, in order to give an indication of the likely sequence and timing of events it has been assumed that all LDPs will be complex and that the hearing sessions will last up to 15 working days.

27. Experience to date also shows that at least half an Inspector's time is likely to be spent on the initial examination of the document and preparation for the hearing sessions. Reporting periods are shorter than for old-style development plans. The hearing sessions will be carefully structured around the main matters and issues and reports should flow easily and logically. Reports will no longer respond to individual representations and hence can be much more focussed on the critical matters and issues.

#### *The role of key participants in assessing soundness*

##### Welsh Assembly Government

28. The Assembly Government has a key role in guiding LPAs in the production of sound plans. Plan making authorities should keep the Assembly Government fully informed throughout the process. This will allow it to make an important contribution to speeding up the system by identifying serious procedural errors or inconsistencies with national policy at an early stage.

29. Prior to submission of the plan the Assembly Government will identify any serious omissions, errors or conflicts and will endeavour to resolve these where possible with each LPA prior to the examination. But the Assembly Government has the opportunity to make formal representations that will be considered at the examination, either in writing or, where considered necessary by the Inspector, by appearing.

30. The Assembly Government will assess a deposit LDP to ensure it has been prepared having regard to national policy and that any exceptions are fully justified and supported by robust evidence. If the Assembly Government is not satisfied that there is sufficient evidence to justify the departure, it will make representations to the LPA accordingly. If the LPA decides to proceed with the plan, any opinion of the Assembly Government that the LDP has not had proper regard to national policy will be taken as a representation seeking a change. The Assembly Government will provide evidence either in writing or, where necessary, in person at the examination to enable the Inspector to decide whether or not the departure is justified.

31. Section 65 of the 2004 Act provides the Assembly 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. Paragraphs 6.2-6.3 of LDP Wales make clear that the Assembly Government will only use such powers in a limited range of circumstances and as a last resort. The Planning Inspectorate will provide the Assembly Government with a copy of the draft report on the examination of the LDP when sent to the LPA for fact checking.

#### Local Strategic Partnerships

32. Each local authority should involve the local strategic partnership in the preparation of the LDP to help ensure it has regard to the Community Strategy. If the local strategic partnership considers there are conflicts between the LDP and the Community Strategy, the local planning authority should seek to resolve these prior to submitting the LDP for examination. If there is a conflict between the community strategy and national policy, the latter will prevail unless the LPA can demonstrate sufficient local justification based on relevant evidence.

#### The Community and other Stakeholders

33. The key to successful plan preparation and examination will be the process of consultation and engagement with the community and other stakeholders that precedes the deposit stage. It is during this part of the process that options and alternatives will be generated and subjected to sustainability appraisal. Early engagement will strengthen plan production by allowing the LPA to consider alternative sites and options at an early stage before drawing up the deposit version of the LDP. This should help to minimise objections regarding the soundness of the plan later in the process and will certainly help to clarify the issues on which the examination will need to focus. Further advice on early involvement and

securing input from the community and other stakeholders is given in the LDP Manual.

34. Once the LDP has been placed on deposit, it is desirable that alternative sites and proposals are not put forward by objectors, although the process does not prevent this. The LPA will be required to advertise representations seeking to add an alternative site, delete an allocated site, or amend the boundary of a site<sup>12</sup>. But the alternatives put forward at this stage should have come forward earlier in the process and so will have been subject to the normal process of appraisal and strategic environmental assessment.

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<sup>12</sup> Regulation 20 of the 2005 Regulations; View at:  
<http://www.opsi.gov.uk/legislation/wales/wsi2005/20052839e.htm>

# The Procedural Timeline - Examination of an LDP

Table 1: LDP with hearing sessions lasting up to 15 days<sup>13</sup>

Week	Key Actions
1+ onwards	<ul style="list-style-type: none"> <li>LPA submits LDP to the Welsh Assembly Government and the Planning Inspectorate (see LDPW paras 4.32-33) including a full and complete evidence base (i.e. all documents specified in regulation 22 and LDPW para 4.33; see also LDP Manual section 8.3.2)</li> <li>Provided a PO is in place the Inspectorate will proceed to appointment of the Inspector (which will be dependent on PO being in place). 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 (<u>Note</u>: 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 provide papers on specific issues highlighted by the Inspector. However, papers should not be put forward if not asked for by Inspector. If LPA wishes to produce topic papers, these should be part of the evidence base submitted with the LDP.</li> <li>PO sends initial letter to representors.</li> <li>LPA prepares answers to any matters and issues raised by the Inspector in the early correspondence.</li> </ul>
7	<ul style="list-style-type: none"> <li>Inspector will aim to finalise the programme for the hearing sessions and the Matters &amp; Issues/agenda for the hearings by the time of the PHM.</li> <li>Inspector will produce initial Guidance Notes for participants to be circulated before the PHM.</li> <li>PO circulates Inspector's Guidance Notes to representors and clarifies and confirms attendance at the hearings.</li> <li>LPA to advertise the start date of the hearing sessions at least 6 weeks in advance – Reg 23.</li> </ul>
8 PHM	<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>It is important that all those who wish to be involved in the examination, particularly those attending the hearing sessions attend the PHM. The merits of the LDP will not be discussed at the PHM but the Inspector may invite comments from the participants on the Matters &amp; Issues identified for the examination.</li> <li>If an LDP is very straightforward and not contentious, the Inspector may deal with the LDP by written representations negating the need for a PHM and hearing sessions.</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 Matters/Agenda for the hearings as soon as practicable after the PHM.</li> </ul>

<sup>13</sup> Some LDPs may require more than 15 hearing days. In these circumstances, the Inspectorate's LDP administrative team will discuss an appropriately tailored timetable with the LPA.

	<ul style="list-style-type: none"> <li>LPA &amp; participants will start work on providing any material requested by Inspector at the PHM. 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 3 weeks after the PHM 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 the statements - important that the statements from the LPA and other participants should be available well before the hearings commence, so that everyone (including the Inspector) is fully aware of the evidence/points being made. PO needs to circulate the LPA's statements and those of the other participants.</li> </ul>
13	<ul style="list-style-type: none"> <li>PO circulates final detailed agendas for the discussions at each of the hearing sessions to the relevant participants.</li> </ul>
14+ onwards <sup>14</sup>  <b>Hearings</b>	<p><b>HEARING SESSIONS COMMENCE</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>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  <b>Reporting</b>	<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> </ul>
Week 37	<ul style="list-style-type: none"> <li>The report will be subject to an internal Quality Assurance process in the Inspectorate before dispatch. This process takes around 3 weeks.</li> </ul>
Week 40 <b>Fact check dispatch</b>	<ul style="list-style-type: none"> <li>LPA has 2 weeks to carry out the fact check.</li> </ul>
Week 42 <b>Comments from LPA</b>	<ul style="list-style-type: none"> <li>Inspector will respond to the fact check matters raised by the LPA.</li> </ul>
Week 43 <b>Final Report</b>	<ul style="list-style-type: none"> <li>Final report will be dispatched.</li> </ul>

<sup>14</sup> It is likely that the Inspector will programme a break between blocks of hearings; see paragraphs 5.7 and 5.8.

# Section 1: Submission

## *Initial tasks*

1.1 The examination process does not start until the LDP is submitted to the Welsh Assembly Government and the Planning Inspectorate including a full and complete evidence base, supporting documentation and addendum if produced. The 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.

1.2 Providing the LPA has met the statutory and procedural requirements on submission, 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*

1.3 Within the first 2 weeks the Inspectorate will carry out early scoping of the LDP both in relation to procedure and content to pass to the Inspector. Administrators will do initial checks on the LDP and consider whether the plan is procedurally sound (subject to the Inspector's consideration). Inspectorate planning officers carry out a more detailed qualitative check and provide a comprehensive scoping report for the Inspector. If the LDP raises high-level technical issues, 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.

1.4 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.

## Section 2: Preparation and Initial Examination

2.1 By no later than week 2 the Inspector will commence early appraisal of the LDP 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.

2.2 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>15</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 matter and issues*

2.3 An early task for the Inspector is to establish the 'matters' and 'issues' to be investigated at the hearings and the Inspector will do so before the PHM. Important terms used in this guide are defined as follows:

- 'matters' - examples of which are housing provision, employment land provision, settlement strategy or flood risk;
- 'issues' - or the key points on which decisions about the soundness of the plan will depend; and
- 'Inspector's questions' - these will be related to the issues and circulated in advance for discussion during the hearing part of the examination.

2.4 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 throughout the process of preparing the LDP, how these have been addressed in the Plan and its recommendations on the representations; this is provided by the LPA under regulation 22 (2)(c)(ii-vi). However, it 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

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<sup>15</sup> Cumulative flaws would indicate a potentially serious situation where the Inspector potentially 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).

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.

#### *Fundamental/ Cumulative flaws and exploratory meetings*

2.5 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 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.

2.6 If the Inspector forms the view that the submitted 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.

2.7 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 worse case scenario, withdrawal of the LDP.

2.8 Further guidance on the procedures relating to exploratory meetings and suspension is provided in Section 9 'Exceptional Procedures' of this guide.

#### *Allocating participants to hearings*

2.9 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). However, the Inspector is not precluded from inviting 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.

2.10 An Inspector will begin by allocating those who wish to be heard to one of the main matters or issues. 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.

2.11 Copies of the matters, issues and questions for each hearing session and a list of the participants will be issued in draft at the PHM if not before. By week 7 (or just before the PHM) the PO will clarify and confirm attendance at the hearing sessions. The Inspector will finalise the programme for the hearing sessions and the Matters & Issues/Agenda for the hearings as soon as possible after the PHM.

*Additional written material from participants*

2.12 Papers should not be put forward if not asked for by the Inspector. If an LPA wishes to produce topic papers, these should be part of the evidence base submitted with the LDP. Similarly participants should ensure that all their evidence is provided with their representation and not expect an opportunity to submit further material during the examination.

2.13 Whilst representors may still expect to present their statements as further developments of an original 'objection'; this is no longer the case. 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. 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.

2.14 The Inspector will develop a list of issues and questions to which he/she will 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 ground if one was not submitted with the LDP<sup>16</sup>. However, the fact that the parties may agree on certain issues will not prevent the Inspector probing those issues further if necessary.

2.15 Any additional material produced by participants in response to a specific request from the Inspector will be circulated by the PO. In order to avoid a situation where the parties make further submissions countering the arguments of others (rather than focus on what the Inspector has requested), the date for submission of responses to any particular issues will normally be the same for all parties.

*Guidance notes*

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<sup>16</sup> See LDP Wales para 4.27 and the LDP Manual which recommends SoCG in advance of submission.

2.16 The Inspector will provide Guidance Notes for participants to be circulated before the PHM. 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 PHM by helping participants understand the procedures.

## Section 3: The Pre-Hearing Meeting<sup>17</sup>

3.1 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 for LDPs to be around 8 weeks after submission. However this could be delayed by up to 2 weeks if the LPA advertise changes to the deposit LDP; ensuring that changes are advertised at the same time as or immediately prior to submission will minimise any delay.

3.2 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 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.

3.3 If a plan is very straightforward, not contentious and no one wishes to appear at a hearing, the Inspector may deal with the LDP by written representations, avoiding the need for a PHM. Similarly where an Inspector intends to deal with the LDP through only 1 or 2 days of hearing sessions, the Inspector may deal with the PHM matters solely by exchange of correspondence.

3.4 At the PHM the Inspector will:

- Explain that he/she has been appointed to carry out an independent examination of the 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 should be considered by the LPA to be sound;
- Explain the role of the PO<sup>18</sup> 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<sup>19</sup> of core documents;

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<sup>17</sup> LDP Wales and the LDP Manual refer to the Pre-Examination meeting; this is now referred to as the Pre-Hearing Meeting

<sup>18</sup> The Inspectorate also provides programme officer training – for further information contact [wales@pins.gsi.gov.uk](mailto:wales@pins.gsi.gov.uk)

<sup>19</sup> The Examination Library should contain copies of documents relevant to the LDP including existing plans, committee reports, research reports, the Wales Spatial Plan, Planning Policy Wales, Minerals Planning Policy Wales, relevant Technical Advice Notes and Circulars, and any other information likely to be used during the examination.

- 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, issues and questions 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 main 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 issues and questions;
- 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;
- Confirm that the LPA has undertaken a 'self-assessment' exercise, this should be provided with the submitted LDP; and
- Offer an opportunity for questions to be put to the Inspector on procedural matters and for him/her to put questions to others.

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

- That the LDP has 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 on-line (wherever possible) and in paper form.

3.6 Statements from participants on the matters and issues should only be submitted if requested by the Inspector and must be focussed on the defined issues and questions. Where the Inspector considers it necessary, he/she can ask participants in hearing sessions to submit statements of limited length (not more than 3000 words).

3.7 A deadline will be provided at the PHM for return of statements. It should be set around 2 weeks before the start of the first hearings (i.e. around week 12). 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.

3.8 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 issues and questions. 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.

3.9 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, with a view to the hearings commencing at week 14.

3.10 The PO will circulate the Notes of the PHM, along with the programme for the hearing sessions and the final list of Matters/Agenda for the hearings as soon as practicable after the PHM.

3.11 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 (see paras 5.11-5.15 for further advice).

## Section 4: Before the first hearing sessions

4.1 The LPA and participants should start work on providing any material requested by the Inspector as soon as possible after the PHM. The LPA and other participants can expect around 4 weeks after the PHM to produce their statements for the hearing session. The PO will exchange and/or circulate statements as soon as they are received.

### *Agendas for hearing sessions*

4.2 It is important that the statements from the LPA and other participants are available well before the hearings commence so that everyone (including the Inspector) is fully aware of the evidence/points being made. In many cases, the agenda for hearings will be the same as the Inspector's note circulated for the preparation of statements. Clearly, if the same list of issues and questions 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 need to be reviewed by the Inspector.

4.3 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 below under Section 9 Exceptional Procedures).

4.4 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.

## Section 5 Hearing Sessions

### *Managing the hearing sessions*

5.1 The 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.

5.2 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.

5.3 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.

5.4 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.

5.5 Representors who are supporting the LPA at submission stage do not have a right to appear. As previously noted, the starting point for the examination is the assumption that the LPA considers the LDP it has submitted to be sound. A firm line will be taken against supporters' requests to appear since their position is represented by the Council. However, if the Inspector considers that it would be helpful to be informed about a matter that goes to soundness by someone supporting the LDP, he or she may invite them to participate.

5.6 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.

5.7 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 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.

5.8 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*

5.9 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.

5.10 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 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*

5.11 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 and 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.

5.12 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.

5.13 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.

5.14 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.

5.15 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 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.

5.16 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.

5.17 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 (see paras 5. 22-23).

5.18 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*

5.19 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.

5.20 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.

5.21 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*

5.22 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.

5.23 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.

#### *Changes to a submitted LDP*

5.24 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. This enables the LPA, where necessary, to put forward and advertise an addendum of focussed changes<sup>20</sup>. This is a key premise of delivering the streamlined examination timetable. Provided any addendum has been subject to proper consultation and any submitted schedule of minor changes that do not affect soundness (and therefore do not require consultation) are accepted as such, the Inspector will regard them as part of the submitted plan and to be the final word of the LPA. At this late stage of the plan preparation process there is no excuse for an LPA to be seeking to complete or finalise its LDP; this should be done prior to submission.

5.25 Changes after submission should be at the instigation of the Inspector in response to concerns that he/she raises with the LPA. Should the Inspector identify any changes during the examination it is likely that the Inspector will ask the LPA to produce a schedule to be appended to his/her report (subject to the guidance set out below).

5.26 Where the Inspector identifies the need for changes 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 a hearing. 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 LDP will be found to be unsound.

5.27 If the Inspector considers that the LDP (including any addendum) should and can be changed after submission to make it 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 Section 9 'Exceptional Procedures'.

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<sup>20</sup> Advice is set out in WAG Circular Letter CL-01-2009 on the production of an addendum to the deposit LDP setting out the focussed changes it wishes to make together with a schedule on minor changes that do not affect soundness.

5.28 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<sup>21</sup>.

5.29 Where changes are identified which relate to presentational flaws or matters of clarification, the Inspector will request the LPA to take responsibility for undertaking work of an editorial nature (assuming the underlying strategy is sound). No new evidence should be submitted and the changes must not materially affect the substance or soundness of the submitted plan. Such changes should be provided by the LPA so that they can simply be accepted by the Inspector. However, Inspectors will check these changes (and any schedule of minor changes provided at submission) to satisfy themselves they are minor and do not affect the soundness of the LDP or require further publicity or sustainability appraisal work.

#### *Concluding the scheduled hearing sessions*

5.31 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's development plans team in Cardiff. When calculating the date for providing the report to the LPA, Inspectors will add on a period (at least 3 weeks) for the internal quality assurance (QA) process as set out in Table 1 above.

5.32 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.

5.33 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.

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<sup>21</sup> Similarly, in circumstances where the LPA has been subject to focussed changes prior to submission (which will be set out in an addendum), the Inspector will take into account representations made about any such change and hear those that are exercising their statutory right to appear at the hearing sessions.

*Further material and hearing sessions*

5.34 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.

5.35 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.

## Section 6 – Report writing

### *Key principles for reporting*

6.1 In drafting the report, the Inspector will concentrate on:

- reaching clear conclusions, backed by reasoned judgments, on the compliance requirements of the 2004 Act & 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.

6.2 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. 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 a coherent and effective 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.

6.3 Since the Inspector is not dealing with 'inquiries into objections' (as was the case with Unitary Development Plans), 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*

6.4 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.
- *Consideration of the tests of soundness* – reports are not structured around soundness test headings but are sub-divided into topics and issues, setting out the Inspector's reasoning and conclusions.

- *Overall Conclusion* – whether the Plan is sound with changes or fundamentally unsound and cannot be changed by the Inspector.

6.5 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.

6.6 In coming to a final or overall conclusion it will be necessary to refer to all the tests of soundness. However, in the body of the report it should only be necessary to conclude on the tests relevant to each issue. For example, if the issue is “Does the evidence base support the number of houses allocated?” it would only be necessary to refer to test CE2.

#### *Inspector recommendations*

6.7 The changes to the LDP specified by the Inspector to make it sound will be grouped at the end of sections which deal with the issues within the report. They will be prefaced by the words: *‘The following changes are necessary to make the plan sound...’*. Where there are more than a few short changes these will be set out in an annex to the report. The Inspector’s recommendations are binding and the LPA must adopt the LDP as recommended to be changed by the Inspector unless the Assembly Government directs them not to.

6.8 As recommendations are binding, the exact wording of any change must be given in every instance. Inspectors’ reports may permit LPAs to make consequential changes to an LDP in order to remove any inconsistencies following the Inspectors’ amendments. However, such changes should be very limited, such as alterations to paragraph or page numbers. Any other inconsistencies should be identified by LPAs in the ‘fact check’<sup>22</sup>.

6.9 Where a LDP has been submitted with an addendum the Inspector will clarify its status early in the report. Where the addendum has been accepted as part of the submitted LDP the Inspector will recommend that it (amended by way of recommendations if necessary) should be inserted into the LDP. This will be set out along the following lines: *‘The changes the addendum makes should be added to the deposit LDP (subject to any changes indicated in my main recommendations) in order to provide a clear straightforward LDP for adoption.’*

6.10 Only those parts of the addendum subject to recommendations for change will be set out in an appendix to the Inspector’s report. Similarly, provided they are accepted as such, any minor editing changes submitted with the LDP will not be set out in an appendix to the report.

6.11 Inspectors are generally discouraged from appending ‘track change’ annexes to their reports. Similarly LPAs should not seek to provide a track change plan unless requested to do so by the Inspector.

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<sup>22</sup> Further information on the ‘fact check’ stage is provided in Section 7.

6.12 A glossary may sometimes be provided in the report if appropriate. Other appendices, for example listing the 10 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.

## Section 7 – Delivery of fact check report to LPA

7.1 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.

7.2 The report will be copied to the Assembly Government. Section 65 and 67(4) of the 2004 Act provides that the Assembly 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 Assembly Government will be made publicly available.

7.3 If an LDP is sound subject to changes, the binding recommendations within the Inspector's report will set out the changes to remedy any unsoundness. 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. However such 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, in particular, in relation to the sustainability appraisal process and proper community involvement; neither third parties nor the LPA should be taken unaware. This will require careful judgment by the Inspector in the circumstances of the case.

7.4 It is also possible that in order to be found sound an Inspector may conclude that certain parts need to be deleted. It may be feasible to separate and extract the unsound elements provided what remains comprises a sound plan when read as a whole. However, again there is a particular need for the Inspector to have regard to the implications of the stakeholder involvement and sustainability appraisal requirements. Furthermore, those parts that are deleted must not compromise important policies that the LDP must contain to accord with national policy.

### *Unsound LDPs*

7.5 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 explanatory meeting.

### *Responding to fact check*

7.6 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.

7.7 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.

## Section 8 - Delivery of final report

8.1 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.

8.2 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. A list is available on the Planning Inspectorate website which details those LDPs that have been submitted for examination and the outcomes<sup>23</sup>.

8.3 LPAs will be invoiced for the examination in accordance with the Service Level Agreement (SLA)<sup>24</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<sup>25</sup>.

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<sup>23</sup> View at: [http://www.planning-inspectorate.gov.uk/cymru/wal/index\\_e.htm](http://www.planning-inspectorate.gov.uk/cymru/wal/index_e.htm)

<sup>24</sup> The SLA covers the arrangements between the Inspectorate and the LPA for the examination and the delivery of the Inspector's binding report.

<sup>25</sup> View at: [http://www.opsi.gov.uk/legislation/wales/wsi2007/wsi\\_20070728\\_en\\_1](http://www.opsi.gov.uk/legislation/wales/wsi2007/wsi_20070728_en_1)

## Section 9 Exceptional Procedures

### Exploratory Meetings

#### *Overview*

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. 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 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 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 Assembly 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 Assembly 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.

#### *Inspector role*

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 Assembly 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, 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 Outcomes:

- (i) The Inspector recommends that the LDP is withdrawn and that recommendation is not overruled by the Assembly 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. If the Inspector has continuing concerns he/she will indicate so at the PHM 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 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 is 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 Assembly 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 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 has 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 revised 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 (Environmental Assessment of Plans and Programmes (Wales) Regulations 2004<sup>26</sup>).

## Withdrawal

9.21 LPAs may withdraw an LDP at any time before it is submitted for independent examination. After that time an LDP can only be withdrawn if a) an Inspector recommends that it be withdrawn and that recommendation is not overruled by the Assembly Government or b) the Assembly Government directs that an LDP is withdrawn<sup>27</sup>.

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<sup>26</sup> View at: <http://www.opsi.gov.uk/si/si2004/20041633.htm>

<sup>27</sup> Planning and Compulsory Purchase Act 2004, Section 66; View at: [http://www.opsi.gov.uk/acts/acts2004/ukpga\\_20040005\\_en\\_1](http://www.opsi.gov.uk/acts/acts2004/ukpga_20040005_en_1)

## Technical Seminars

9.22 If an LDP 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 - The tests of soundness: key questions and evidence

The following sets out the tests of soundness, some of the key questions they raise where these are not self-evident, and suggested evidence requirements relating to each test.

The soundness tests fall into three categories – **Procedural**, **Consistency**, and **Coherence and Effectiveness**. They are numbered P1-2, C1-4 and CE1-4 respectively for ease of reference.

## Procedural Tests

These 2 tests relate specifically to the process by which the LDP has been prepared by the LPA. 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.

**Test P1: It has been prepared in accordance with the Delivery Agreement including the Community Involvement Scheme (CIS).**

### Key Question

- Have all the relevant consultation/participation procedures set out in the CIS been carried out?

### Evidence

- The local planning authority's CIS, as agreed by the Assembly Government with any subsequent agreed variations
- The Consultation Report produced for the LDP, which should show how the LPA has carried out its consultation procedures and how these relate to their CIS
- The LDP Regulations.

**Test P2: The plan and its policies have been subjected to sustainability appraisal including strategic environmental assessment.**

### Key Question

- Has sustainability appraisal (SA), incorporating the requirements of strategic environmental assessment (SEA)<sup>28</sup>, been carried out in relation to the LDP?
- Has an Appropriate Assessment been carried out under the Habitat Regulations 1994?

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<sup>28</sup> Environmental Assessment of Plans and Programmes (Wales) Regulations 2004; View at: <http://www.opsi.gov.uk/si/si2004/20041633.htm>

## ***Evidence***

- LPAs are required to submit a SA report with the LDP, identifying the process by which the SA has been carried out, the baseline information used, and the outcomes of the process. Guidance on the SA process is provided in the LDP Manual. The outcome of the process will be subject to the later tests of coherence and effectiveness, notably test CE2.

## **Consistency Tests**

The 4 tests in this group relate to both process and overall content. In making judgements about the degree of consistency, the Inspector will consider whether, from the process by which it was prepared, its content, and its strategy/policies/allocations, the LDP can be shown to meet the tests. 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 C1: It is a land use plan which has regard to other relevant plans, policies and strategies relating to the area or to adjoining areas.**

### **Key Questions**

- Does the plan put forward proposals for the use and development of land that adequately take account of the relationship with the plans/policies/requirements of other organisations, such as those of utility companies and agencies providing services in the area, including their future plans or strategy and any requirement for land and premises, which should be prepared in parallel?
- Is it clear how the plan relates to other plans and strategies such as local transport plans which will influence the delivery of policies and proposals within the plan?

## ***Evidence***

- 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 separate document used by the LPA to demonstrate that this test of soundness is met. 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.

**Test C2: It has regard to national policy.**

### **Key Questions**

- If the plan contains any policies or proposals which are not consistent with national policy, is there local justification?

- Does it avoid wasteful/unnecessary repetition of national policy? LDPs are intended to be shorter, focussed documents that do not unnecessarily repeat national policy.

### ***Evidence***

- Planning Policy Wales and its Companion Guide, Minerals Planning Policy Wales, and Technical Advice Notes.
- Local studies or any other information providing the basis for departing from national policy, such as those deriving from the community strategy or National Park Management Plan, or those forming part of the evidence for the LDP.
- The SA report and SEA, where these provide justification for a departure from national policy.

### **Test C3: it has regard to the Wales Spatial Plan (WSP).**

#### **Key Questions**

- Does the plan contain any policies or proposals which are not consistent with the broad strategies in the WSP and, if so, is there a local justification?
- Does the plan take account of relevant evidence, including cross-boundary work undertaken for the WSP?
- Does the LDP evidence base explain how the strategy relates to the WSP?

### ***Evidence***

- The WSP, agreed area programme outputs and any studies or other information providing evidence of a local justification for departure.
- The SA report and SEA, where these provide justification for a departure from national policy.

### **Test C4: it has regard to the relevant community strategy/ies<sup>29</sup>.**

#### **Key Question**

- Does the plan have regard to the community strategy, by setting out policies and proposals which deliver key components of that strategy, which are consistent with higher-level planning policy and relate to the use and development of land?

### ***Evidence***

- The community strategy and the National Park Management Plan.
- The LDP should have regard to the objectives and priorities established by the community strategy that relate to the development and use of land.

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<sup>29</sup> See paragraph 1.13 of Local Development Plans Wales. In national park areas the National Park Management Plan will reflect the relevant community strategy/ies and should inform the LDP.

## Coherence and Effectiveness Tests

The 4 tests in this group relate to the content of the LDP. These are likely to be the key tests on which the examination will concentrate.

**Test CE1: the plan sets out a coherent strategy from which its policies and allocations logically flow and, where cross boundary issues are relevant, it is compatible with the development plans prepared by neighbouring authorities.**

### Key questions

- Do the policies and allocations clearly relate to the aims and objectives in the strategy set out in the submitted plan? It may help if policies are cross referenced to the key aims and objectives.
- Are the policies within the LDP themselves consistent?
- Are there any obvious gaps in the coverage of the plan having regard to its purpose and the relevant requirements set out in national planning policy?
- Is it clear how the plan relates to those prepared by neighbouring authorities and how cross-boundary issues have been addressed?
- Where there are overlaps, are these consistent/complementary?

### *Evidence*

- The strategy in the LDP will be the principal source of evidence. LDPW states in paragraph 2.10 that the LDP strategy should include a concise statement of the plan's key aims and objectives and strategies for achieving them. The LDP strategy should therefore set the context for its policies and proposals, which must be clearly directed to the achievement of the plan's aims and objectives.
- The plan must also show how it relates, where relevant, to the strategies in neighbouring authority's plans (including Regional Spatial Strategies and Local Development Frameworks where English authorities are involved). Any perceived inconsistencies will need to be explained.
- LPAs should undertake joint studies where appropriate to ensure consistency between neighbouring authorities, for example on housing land or retail provision. WSP area collaborative work will need to be taken into account where it is relevant.

**Test CE2: the strategy, policies and allocations are realistic and appropriate having considered the relevant alternatives and are founded on a robust and credible evidence base.**

### Key questions

- Is it clear that the LPA considered the relevant options and alternatives in 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.

- Are the assumptions in the LDP set out clearly and supported by evidence?
- Does the evidence clearly support the plan's strategy and policies?
- Is the evidence robust and credible and has it been prepared in accordance with national planning policy and good practice guidance?
- Where a balance has been struck in taking decisions between competing alternatives – is it clear how those decisions have been taken?

### ***Evidence***

- Sustainability Appraisal Report: the Report should set out the options and the process by which they have been objectively assessed. It will be a fundamental part of the evidence base.
- Habitats Regulations Appraisal Report: the Report should set out the results of the appraisal process of the LDP as required by the Habitats Regulations<sup>30</sup> and as explained in TAN5, Nature Conservation and Planning, September 2009 (see Annex 6 in particular).

There will be a range of other evidence required to assess this test. The following are suggested examples only and do not constitute an inclusive and definitive list:

- For the strategy - urban capacity studies; urban and rural regeneration strategies; local housing assessments; regional and local housing and economic strategies; retail capacity studies; community development strategies; local transport plans; health and education programmes and strategies; infrastructure providers' investment programmes and strategies; environmental programmes and assessments of waste management needs.
- For policies/allocations proposing the provision of affordable housing, a viability assessment will be required.
- For a site allocation - urban capacity studies; flood risk assessments; various environmental studies and assessments; transport assessments etc.
- For key areas of change - area assessments, market assessments, socio-economic assessments, and environmental assessments and assessments of infrastructure.
- For key areas of protection – surveys and assessments of the natural or historic/built environment and a habitats regulations appraisal.

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<sup>30</sup> Part IVA is inserted in the Conservation (Natural Habitats, &c) Regulations 1994 (SI 1994/2716) by the Conservation (Natural Habitats, &c)(Amendment) Regulations 2007 (SI 2007/1843)

**Test CE3: there are clear mechanisms for implementation and monitoring.**

### **Key questions**

- Does the plan contain realistic targets and milestones which relate to the delivery of the strategy and policies?
- Is it clear how these are to be measured and how they are linked to the production of the annual monitoring report?
- Are the delivery mechanisms and timescale for implementation of the strategy and policies clearly identified?
- Is it clear who is intended to implement each policy? Where the actions required are outside the direct control of the LPA is there evidence that there is the necessary commitment from the relevant organisation?
- Do the processes for measuring the success of the plan accord with national planning policy and best practice guidance?
- Does the plan set out the factors essential to the delivery of key policy objectives of the plan?

### **Evidence**

- The evidence will be broadly similar to that required to assess test CE2. In relation to site-specific allocations, however, this may include reports or representations by main public and private sector delivery bodies on the practical development opportunities on the allocated sites and alternatives put forward by objectors.

**Test CE4: it is reasonably flexible to enable it to deal with changing circumstances.**

### **Key Questions**

- Is the plan flexible enough to respond to a variety of , or unexpected changes, in circumstances
- Are development control policies written in a form to enable them to provide a robust and consistent framework for considering planning applications?

### **Evidence**

- The LPA should be testing and monitoring the effectiveness of its policies. Some policies will be more critical to the achievement of the plan's objectives than others and these should be identified. Sensitivity testing<sup>31</sup> of the LDP's policies to potential changes in the assumptions that underpin them (such as economic growth or transport provision) and other sources of evidence (see test CE2) would help to demonstrate the robustness of the plan to change. 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

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<sup>31</sup> 'Sensitivity testing' – meaning testing the effect of changing local circumstances in various degrees (e.g. new roads, new employers or loss of) on, for example, the need for housing provision and other facilities.

being delivered and the consequences of this failure for the plan as a whole. Where the risk is significant, the LPA should identify contingency options that will achieve the objectives of the plan in the event that the policy in question cannot be delivered. The LDP should set out the basis for the contingencies identified. For subsequent revisions of LDPs the Annual Monitoring Report (AMR) will be an important source of evidence.