



The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Examination of Local Development Plans (LDPs)

Frequently Asked Questions (FAQs)

October 2009

The Examination of Local Development Plans (LDPs)

Frequently Asked Questions (FAQs)

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Part 1: Questions of general interest

1. What is the purpose of the Examination?

The Inspector's role is to carry out an independent assessment to ensure that the LDP satisfies the statutory requirements for its preparation and is 'sound'.

2. Where are the legislative provisions for Local Development Plans (LDPs) set out?

Part 6 of the *Planning and Compulsory Purchase Act 2004* ('the 2004 Act') provides the statutory framework for the system of Local Development Plans in Wales (LDPs).

3. What does 'sound' mean?

There is no definition for 'sound' in the legislation but it should be considered in this context within its ordinary meaning of 'showing good judgment' and 'able to be trusted' and within the context of fulfilling the expectations of legislation.


4. How will the Local Planning Authority (LPA) assess if their LDP is sound prior to submission?

LPAs may find it useful to carry out an objective self assessment, having regard to the ten tests of soundness and against the key questions in the Planning Inspectorate's *A Guide to the Examination of Local Development Plans*, to satisfy themselves they are submitting a sound LDP. They may submit this assessment as part of their evidence to the Inspector in support of their consideration that the document is sound. However, there is no legal requirement for LPAs to conduct a self assessment of soundness¹.

5. What form will examinations take?

Subject to the right to be heard, the Inspector will determine the appropriate method for examination. Examinations may be conducted using written representations, round table discussions, informal hearings or formal hearings (which may involve cross-examination). The use of written representation is the preferred method, and it must be stressed that these carry the same weight as appearing at the Examination to give oral representations.

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¹ See: www.pas.gov.uk/planmakingmanual

6. How will the Inspector determine soundness?

In order to decide whether the LDP is sound, the Inspector will apply a number of tests to the document. *A Guide to the Examination of Local Development Plans* sets out the ten tests of soundness which fall into three categories: procedural, consistency and coherence and effectiveness. (section 1.2)

The Inspector will need to assess the LDP using his/her professional judgment based on the evidence available, including the representations made, against the tests of soundness. Each examination will be the responsibility of the appointed Inspector who will carry out his/her job in accordance with the underpinning principle of openness, fairness and impartiality.

7. Will the Inspector consider all the tests of soundness?

Yes, the Inspector should have regard to all the tests of soundness. However the degree of detail he/she will need to go into on each test at the Examination is likely to be determined by the representations made on it, and the nature of the plan.

8. If no representations are received on a LDP, will the plan/statement still be subject to an examination?

An examination is required regardless of whether any representations are received on a LDP. The Inspector is appointed to consider the soundness of the Plan as a whole.

9. Will a representation made at an earlier stage of the plan/statement making process be considered at the Examination?




No. Only those representations made at deposit stage will be considered in examining the soundness of LDPs.

10. If the Inspector recommends a change to a LDP, who is to judge if the change is sound?

The Inspector may only make changes in the binding report on the basis of evidence assessed during the examination (whether carried out by written representations or oral hearing) and will not make changes unless he/she is satisfied the Plan will be sound with those changes. The Inspector will give reasons for the changes made.

11. Will the Planning Inspectorate preliminary screen LDPs?

On submission, an early assessment of compliance will be carried out on behalf of the Inspector to ensure the legal requirements are met before the document is examined for soundness.

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12. Can new issues be raised in representations at deposit stage?

Whilst the deposit stage is the opportunity for anyone to put forward the changes they wish to see made to the Plan, strategic options, alternative policy options and proposals should be properly aired during the earlier consultation stages. Representations requesting substantial changes to a LDP at deposit stage may require further work to be done by the LPA or the person making that representation prior to submission of the plan to the Welsh Assembly Government. For example, for a new site to be included at deposit stage it would have to be shown that this had been subject to proper procedures of community involvement and sustainability appraisal.

13. When does the examination process start?

The examination process starts on the submission of the LDP to the Welsh Assembly Government.

There may be circumstances where it is appropriate for the LDP to be rejected prior to consideration of the plan and representations in the context of the tests of soundness (such as where there is an obvious and fundamental procedural omission), but this will depend on the circumstances. If an Inspector were minded to reject a LDP as unsound, full reasons would be given.

14. To what extent will the Inspector be considering the sustainability appraisal report?

The role of the Inspector at the examination is to consider the soundness of the development plan document using the sustainability appraisal as part of the evidence base. Guidance is provided in the *Local Development Plan Manual (June 2006)* issued by the Welsh Assembly Government².

15. What is the Inspector's duty in relation to sustainable development?

Section 39 the 2004 Act applies to the Inspector appointed to carry out the independent examination. It requires that he/she must exercise their function with the objective of contributing to the achievement of sustainable development. The Inspector must have regard to national policies and advice contained in guidance issued by the Welsh Assembly Government.

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² View at: http://wales.gov.uk/topics/planning/policy/developplans/ldp_manual?lang=en

16. Can an Inspector reopen an examination?

The Inspector will normally keep the examination open, after hearing all those who wish to be heard and holding all the programmed sessions, until the report is submitted to the LPA. This will enable the Inspector to seek further clarification on matters which have been raised under written representations and to address, if necessary any new matters which may arise during the hearing part of the examination (providing these do not materially affect the substance of the plan). Once the report is finalised, the examination cannot be reopened.

17. Will there be supplementary guidance available to Inspectors and will it be made available publicly?

The guides are aimed at all those involved in the preparation and examination of LDPs. Where the Inspectorate considers that further guidance might be helpful to Inspectors, particularly where it relates directly to the detailed procedural elements of the Inspectors role at the examination, we shall seek to provide further advice. This advice will be available on request from the Planning Inspectorate.

18. How will best practice be disseminated as the new system of examination beds in?

All guidance will be disseminated through the Planning Inspectorate's website³. Advice on best practice based on the implementation of the new system in England can be found on the Planning Advisory Service website⁴.

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³ View at:

http://www.planning-inspectorate.gov.uk/cymru/wal/appeals/local_development_plans_e.htm

⁴ See: www.pas.gov.uk/planmakingmanual

Part 2: Questions relating to making representations

19. How will I know when the LPA has made the LDP available for public consultation?

The authority will place its local development plan on deposit for public consultation for a minimum period of six weeks. It will place it on its website and make it available at its office and other suitable venues and will give notice by local advertisement in a local newspaper.

It will also send copies to the consultation bodies described in the publication *Local Development Plans Wales* (LPDW)⁵, and will invite representations on the deposit document.

20. How long do I have to submit my representation?

In order for your representation to be considered, at the examination, you must make the representation during the specified consultation period (6 weeks) at deposit stage.




21. Do I have to use the model form to submit my representation(s)?

No, but you are recommended strongly to do so. The forms and accompanying notes are designed to assist you in focusing your representation and will ensure there is consistency in the way representations are presented and considered, helping the examination process to run smoothly.

Copies of the forms and accompanying notes should be made available by the LPA on request or should be available for download on the local planning authority website.

22. Do representations seeking a change to a LDP have to be related to the tests of soundness?

No. But it will assist the Inspector to understand what changes you wish made if representations seeking changes to the LDP focus on the tests of soundness. Ideally representations should seek to demonstrate clearly why the LDP is unsound and what changes are considered necessary to make it sound. Representations must relate to the LDP itself.

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⁵ *Local Development Plans Wales (Welsh Assembly Government, 2005)*. View at: <http://wales.gov.uk/topics/planning/policy/developplans/LDPWales?lang=en>

23. Can I use one form to make all my representations?

Where your representation seeks more than one change (and relates to the failure to meet more than one test of soundness), a separate form should be used for your representation on each change and relevant soundness test. A separate form should also be used for a representation supporting the LDP as opposed to a representation seeking a change.

24. What if I know there are others that share the same concerns as me?

Where there are groups who share a common view on how they wish to see a LDP changed, it would be very helpful for that group to send a single representation which represents the view, rather than for a large number of individuals to send in separate representations which repeat the same points (repeating the same points will not add weight to the case being made). Groups should indicate how many people they represent and how the representation has been authorised.

25. Can representations to a LDP be made confidentially?

No. All the evidence submitted must be in the public domain. Copies of the representations, together with the evidence base will be placed in the Examination Library and published on the Council's website. This will allow those who have made representations to identify others who have made a similar representation.




26. Can I submit my representation electronically?

The Town and County Planning (Local Development Plan) (Wales) Regulations 2005 ('the 2005 Regulations') provide that representations made on the LDP may be sent/made by way of electronic communications. The completed form may be submitted to the LPA via the email address which should be provided by the authority for making representations.

27. What is the nature of the legal right to be heard?

Only those seeking a change (i.e. effectively 'objecting') to the LDP have a right to be heard. Those making representations supporting the LDP do not have the right to be heard. It is for the Inspector to determine how someone will be heard i.e. whether it is a round table discussion, informal or formal hearing.

When a person intends to exercise this right, it is helpful if they consider how attendance at an examination, as opposed to setting out the case in writing, will help the Inspector consider whether the LDP is sound.

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28. Will the Inspector assist me to make my representation at the examination?

Inspectors are careful to ensure that lay participants who are unfamiliar with an oral hearing are properly guided through the process. However, it is not necessarily the case that an appearance before the Inspector will lead him/her to a better understanding of your point – you should consider carefully whether a written representation might allow you to make your case more clearly.

29. Will I be prejudiced if I don't attend a hearing session?

No. Written representations are afforded the same importance and attention as appearances at the hearing.

30. What if I refuse a request to appear by an Inspector?

Inspectors have the power to invite additional participants to the examination who have opted not to be heard or who can offer expert advice on a particular issue. However, where a person who has made a written representation declines an invitation to appear, non-attendance will not detract from their written representation.

31. If I have made a representation seeking a change, will my agreement be sought prior to calling an expert witness to give evidence at an examination?




No. But all relevant parties would be informed of the Inspector's decision to call an expert witness and their comments would be taken into account. You and all other relevant parties would be invited to attend the examination session where the expert witness gives evidence and, where appropriate, given an opportunity to respond to that evidence and take part in any discussion of it.

32. How will I know the outcome of the examination?

After the examination, the Inspector will produce a report for the LPA with his/her recommendations and reasons. The conclusions reached by the Inspector will be binding and the LPA must incorporate the changes required by the Inspector before adopting the LDP.

33. Am I entitled to see a copy of the Inspector's recommendations and reasons in the binding report?

Yes. On adoption of the LDP, the local planning authority must publish the Inspector's recommendations and reasons. These should be available for inspection at the LPA's offices and on its website. Notice must also be given to those persons who requested to be notified of their publication.

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34. Will I be able to identify specifically how my representation has been dealt with in the Inspector's report?

The report will not summarise any representations submitted to the examination but will focus on whether the local development plan is sound, which the Inspector's conclusions will address.

35. What if I wish to challenge the adopted LDP?


Any person may challenge the validity of an adopted LDP on the grounds that it is not in accordance with the powers conferred by the relevant legislation.

Applications must be made to the High Court within 6 weeks of the date of the LPA advertising that the LDP has been adopted.

36. Where can I find further information about Local Development Plans?

The primary source of guidance is the Welsh Assembly Government publication *Local Development Plans Wales*. In addition the *Guide to the Examination of Local Development Plans* published by the Planning Inspectorate offers advice on the examination process. Advice based on experience in England is published by the Planning Advisory Service - see www.pas.gov.uk/planmakingmanual.

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Questions of particular interest to LPAs

37. Where should a formally submitted LDP be sent?

A LPA should submit their Deposit LDP to the Planning Inspectorate copied to the Welsh Assembly Government. Although the 2005 Regulations state 4 paper copies should be submitted, the Planning Inspectorate is content to receive **2 paper copies** and **1 electronic copy**. It should be supported by:

- a copy of the Sustainability Appraisal Report;
- any supporting technical documents and evidence-base material (such as the urban capacity study and housing needs survey);
- a copy of the Delivery Agreement including the Community Involvement Scheme;
- a consultation report;
- copies of all representations made to the deposit plan; and
- a statement of suggested main issues for consideration at the examination.




38. When does the examination of a LDP start?

The examination of a LDP starts on submission of the document together with copies of the representations and supporting evidence base. If no representations are received the examination will still take place and the Inspector will arrange hearing sessions if necessary.

39. How long will the hearing sessions for a LDP last?

The precise length of the individual examination will be determined by the Inspector based on the nature of the LDP and the issues involved. The programme will indicate how long the hearing sessions are anticipated to last and inform participants when they are likely to be required to attend.

The examination programme will show what procedural methods the Inspector intends to adopt having regard to the nature of the LDP and the representations and will indicate who has been invited to each session, having regard to participants' wish to be heard and how the examination is proposed to be structured, having regard to the tests of soundness. The aim is that from submission of most LDPs for examination to issue of the binding report will take no more than 12 months.

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40. Will a Pre-Hearing Meeting be required for a LDP?

In most cases a pre-hearing meeting (PHM) or meetings will be held by the Inspector to discuss the management of the examination, including the overall programme for the examination, how representations will be heard and the timetable for submission of evidence. It is desirable that those who wish to appear at the examination attend such meetings.

41. Does a Programme Officer need to be appointed for a LDP?

A Programme Officer will be required for all LDP examinations and should be in post when the Plan is placed on deposit. They should remain in post (albeit on a part time basis) until delivery of the report. Under the guidance of the appointed Inspector, the Programme Officer will draw up a provisional examination programme and timetable for discussion at the pre-hearing meeting, which will be published on the LPA's website.

42. What if documents submitted are incomplete?

The Planning Inspectorate will inform the LPA and set a timetable for the submission of any missing documents to allow the examination to proceed.

43. Will there be a chance to submit additional material before the hearings part of the examination starts? How long will LPAs have to submit revised/additional material?

There will be no automatic opportunity for additional material to be submitted to support representations. During the examination of the LDP the Inspector may correspond with the participants to clarify matters raised in their representations and he/she may also direct participants to address particular issues about the soundness of the LDP. The Inspector will set deadlines for any response. If any party misses any deadlines for the submission of additional representations set by either the Inspector or the Planning Inspectorate, the Inspector may disregard those representations. No additional information may be submitted for the Inspector to consider unless at his/her request.

44. What if the Delivery Agreement and Community Involvement Scheme has not been complied with in preparing the LDP?

Failure to comply with the Delivery Agreement and Community Involvement Scheme may result in a finding of unsoundness.

45. Is there a checklist available for assessing whether a LDP is sound?

No. However advice on how Inspectors will assess an LDP for soundness and a series of questions to ask can be found in the Inspectorate's Procedure Guide which can be found at:

www.planning-inspectorate.gov.uk/cymru/wal/index_e.htm

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46. When will the Welsh Assembly Government see a copy of the binding LDP report?

Shortly before the Inspector formally issues the binding report to the Local Planning Authority, he/she will send the draft report to the Local Planning authority to allow it an opportunity for final comment on factual matters (known as 'fact check' stage). The Planning Inspectorate will also provide the Welsh Assembly Government with a copy of the draft at that stage. Any issues raised by the Welsh Assembly Government will be made publicly available.

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