

Planning

Taking part in the Development Consent Order process



If you are affected by a Nationally Significant Infrastructure Project (NSIP) then you may be interested in reading this guide which explains how to engage in the Development Consent Order (DCO) process.

The DCO process is an application for an order which, if granted, combines the grant of planning permission with a range of other consents.

In order to engage in the DCO process, you need to make a relevant representation. This means you become an interested party, enabling you to also make a written representation and appear at hearings, ensuring that your view is heard and taken into account.

This guide covers the various opportunities to engage in the process, some comments on the grounds on which objections can be made and some tactical considerations from the objector's perspective.

Adequacy of pre-application consultation

You may wish to consider whether you feel the pre-application consultation was adequate and carried out in line with the Statement of Community Consultation (SoCC). If not, you can object to the promoter and the Local Planning Authority (LPA). The promoter is the party who wishes to build out the NSIP project and who has submitted the DCO application. Both the Promoter and the LPA are obliged to report on the sufficiency of pre-application consultation.

Further guidance is contained in: DCLG *Planning Act 2008: Guidance on the pre-application process* (January 2013), PINS advice note 8.2 *Responding to developer's pre-application consultation* and PINS advice note 16: *The developer's pre-application duties*.

Relevant representation

Following acceptance of a DCO application, the promoter will publicise how objectors can make representations. At least 28 days must be given for representations to be made.

A valid representation, called a "relevant representation", must be made to register as an interested party and therefore have a right to take part in the remainder of the examination process. The best way to do this is online at the

National Infrastructure Planning website within the relevant project page. Tactically, as the examination process is short, it is advantageous to submit a strong objection at outset, so the promoter is clear about what needs to be addressed. This also ensures maximum pressure is put on the promoter to finalise agreements before the hearings start.

Further guidance is contained in: the Planning Inspectorate advice note 8.3 *How to register and become an interested party in application*.

Preliminary meetings

These are procedural meetings run by the examining authority to agree the examination process and timescales. You may wish to attend if you want to make comments on what key issues should be considered during the examination process, the need for hearings and the timetable. However, it is not necessary to attend in order to maintain an objection. Advantages of attendance are being up-to-date on the process/timetable and making your presence visible to the promoter.

Following the preliminary meeting, a "rule 8" letter will be issued along with a summary of the preliminary meeting and finalised examination timetable. It is very important for you to note all the deadlines and keep track of any changes to the examination timetable, if you wish to have a say in the process.

Further guidance is contained in: Infrastructure Planning (Examination Procedure) Rules 2010/103 and PINS advice note 8.4 *Influencing how an application will be examined – the preliminary meeting*.

Written representation

The examination period lasts for six months from the preliminary meeting. Written representations are the main opportunity for objectors to set out their case against the DCO or for any changes or amendments that they require to the terms of the Order. **This is therefore, your last written chance to request changes to the scheme, changes to the**

extent of land being taken or used or any practical measures required to protect your property or lessen the impacts of the scheme on your property. Written representations must be submitted by the deadline in the examination timetable. Materials to prove the points made should be included within the written representation.

Further guidance is contained in: PINS advice note 8.5 *Participating in the examination.*

Statements of Common Ground (“SoCG”)

SoCG’s are a statement between an objector and promoter to summarise the basic information that is agreed and not in dispute. Objectors can suggest that promoters prepare the first draft of these, although they should ensure that they only sign up to those statements with which they fully agree.

Overview of Grounds of objection

The examining authority may disregard vexatious or frivolous objections or those which relate to the merits of matters of National Policy, contained in National Policy Statements. Otherwise the grounds of objection vary project to project but often focus on the failure to consider adequate alternative options and/or incorporate further mitigation measures. Objections also often cover the full range of planning issues and the adequacy of the Environmental Impact Assessment and the mitigation measures.

Compulsory Acquisition of Land

Objections which relate solely to compensation values for compulsory acquisition will be disregarded. Various policy tests must be met before Compulsory Purchase of Land will be authorised. Objections therefore, often focus on the failure to meet these tests by claiming:

- ▶ The failure to consider reasonable alternatives (including modifications)
- ▶ Lack of a clear idea of how all land taken will be used
- ▶ Insufficient details on funding and certainty of funding coming forward. Promoters are also required to show sufficient funding to deal with land acquisition and any potential blight liability. This is particularly important if the promoter is a shelf company with no assets
- ▶ No compelling case in the public interest sufficient to outweigh the human rights of current land owners
- ▶ Insufficient attempts to acquire the land by agreement have been made

Often promoters prefer to wait until they have a confirmed Order before committing to land acquisition costs. This is unfair on land owners whose ability to deal with their own land has been stymied.

Further guidance is contained in: Planning Act 2008: guidance related to procedures for the compulsory acquisition of Land.

Compulsory Purchase of Land (CPO): negotiations with the promoter

Promoters may pay your CPO surveyors/legal costs of concluding any settlement agreements for the acquisition of land/resolution of objections. Undertakings for these costs can sometimes be provided by promoters upfront. The documentation to be reviewed to establish the extent of land affected includes the Land Plans, Book of Reference, Statements of Reasons and the articles of the DCO itself. This is a lot to ask un-represented objectors, unfamiliar with the process, to deal with and doesn’t allow for equality of arms!

Written questions

As well as written representations, the examining authority also conducts the examination by issuing rounds of written questions and considering the responses. The deadlines for responses will be set out in the timetable. Most of the questions are directed to the promoter; however you should check if you have been asked to respond to any questions.

Hearing

There are 3 types of hearings that can be held during the course of the examination. These are:

- ▶ Issue Specific Hearings: used to discuss key issues/drafting of the Order etc.
- ▶ Open Floor Hearings: used to allow interested parties to have a chance to speak
- ▶ Compulsory Acquisition Hearings: used to discuss need for CPO of land

All hearings are open to the public. Parties asking to speak should be able to, in one of the above formats.

Challenging Development Consent Orders

Following the SoS’s decision on a DCO, there is a six week period in which judicial review challenges may be made.

Key contact



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