

The Nationally Significant Infrastructure Project planning process

Planning for strategic roads

To get a road built, Highways England needs to go through some important legal processes that are part of the planning system.

Because Highways England is wholly owned by the Government, in effect the Government is applying to itself for permission to build the road. Nevertheless these processes must still be followed correctly.

In brief, Highways England will plan to:

- consult the public on route choices
- announce its preferred route and safeguard it from development
- put together a planning application, including an environmental statement
- apply for planning permission - usually through the Nationally Significant Infrastructure Project process
- await final planning approval from the Minister

The processes outlined here only apply to trunk road schemes or motorway widening where the land taken is outside the boundary of that already owned by Highways England.

If the Government wants to widen a motorway and already owns the affected land, it follows a different process, known as 'widening within existing boundaries' or 'rapid widening'. Highways England publishes an environmental statement, holds a consultation and that is that, as there is no need to apply for planning permission.

Highways England will also want to safeguard the route of a new road, to prevent any development along it. To do this, it must apply for a TR111 notice. The Secretary of State for Transport tells the local council's planning department that any planning application affecting land within 67 metres from the middle line shown should be referred to Highways England. This is done under Article 15 of the Town & Country Planning General Development Order 1995.

The TR111 notice is specific to the Secretary of State for Transport. It cannot be transferred to any other Minister or public authority. It is not possible for a local authority to take over a TR111 – they must apply separately.

The Nationally Significant Infrastructure Projects (NSIPs) process

This process has been used for a number of road schemes now, with many more likely to come through the process in the next few years. So far all have received approval.

This first road project, the Heysham-M6 Link Road, was approved in 2013. David Gate from Transport Solutions for Lancaster and Morecambe provides some tips to help other road campaigners (see box on page 8).



The Nationally Significant Infrastructure Project planning process

Large road projects are now examined directly by the Planning Inspectorate (PINS) in a simpler - and usually quicker - process than a full public inquiry

← ~14 months is now the longest period from application to decision for large infrastructure projects →

Pre-application

This is the key stage for consultation and can go on for years, with promoters consulting first on the general idea of a road, then on different routes and finally on the proposed scheme in detail.

What they often forget is to consider and consult on other less damaging options!

At the end of the examination, the Planning Inspectorate must send a recommendation to the Secretary of State within **3 months**. The Secretary of State then has a further **3 months** to publish a decision.

Acceptance

When the application is submitted, the Planning Inspectorate has **28 days** to decide whether to accept it. This is a good time to complain about a faulty consultation.

Pre-examination

Once accepted, objectors only have **28 days** to register as 'interested parties' in order to take part in the examination.

Soon after, a Preliminary Meeting will be held to set the topics and timetable for the examination stage. The day after this meeting is the official start date of the examination.

Examination

The examination must be completed within **6 months** and there is a **breakneck series of 21-day deadlines** for everyone to stick to.

The examiner will issue questions to the promoters and objectors and will hold expert hearings on specific issues, as well as 'open floor' hearings for the local community.

Decision

Post-decision

The decision can be legally challenged, but the time limit for this has now been shortened to just **6 weeks**.

Find out more and keep updated on every NSIP via the Planning Inspectorate website: infrastructure.planningportal.gov.uk

The stages of the examination

This Planning Inspectorate website outlines *the examination process*, and the Advice Note 8.1 attached to it are useful reading for what to expect.

The process is broken down into the following stages:

- **Pre-application** - when initial consultation takes place ahead of any planning application
- **Acceptance** - when the planning application is accepted for examination
- **Pre-examination** - when people register to take part in the Examination and the Examining Authority is appointed and outlines how the Examination will be run
- **Examination** - 6 month period when evidence is submitted and challenged
- **Decision** - when the Examining Authority writes its report and makes a recommendation. The Secretary of State then makes a decision
- **Post decision** - a 6 week period during which a judicial review can be requested

Pre-application

The Planning Inspectorate website says: *"The process begins when the Planning Inspectorate is informed by a developer that they intend to submit an application to us in the future. Before submitting an application, the developer is required to carry out extensive consultation on their proposals. The length of time taken to prepare and consult on the project will vary depending upon its scale and complexity. Responding to the developer's pre-application consultation is the best time to influence a project, whether you agree with it, disagree with it or believe it could be improved."*

The key thing to influence at this stage is the consultation process - not just responding to it but affecting its terms and scope.

Statement of Community Consultation

Before the project is registered with the Planning Inspectorate, the promoters should be liaising with the local authorities on a plan for consultation. They will eventually produce a 'Statement of Community Consultation' (SOCC) which sets out the process they intend to complete and this should be signed off with the relevant authorities.

At an early stage, therefore, ask the promoters and local authorities for the draft SOCC and make sure it is as wide and comprehensive as possible. The promoters will have to follow it to the letter in order for their pre-application consultation to be valid.

Things you could ask for:

- a longer consultation process
- more information to be provided to the public (e.g. a more detailed environmental statement or traffic flow predictions) at the start of the consultation process
- more options to be consulted upon
- more exhibitions or consultation events
- a wider consultation area (the road may well affect neighbouring local authority areas, but the promoters will want to keep the consultation area as limited as possible)

More [detailed guidance on the pre-application process](#) has been produced by the Department for Communities and Local Government. It states that the minimum consultation period is 4 weeks, but bigger or complex applications will require more time.



Acceptance

When a developer submits a formal application for development consent to the Planning Inspectorate the Planning Inspectorate, on behalf of the Secretary of State, has up to 28 days (excluding the date of receipt of the application) to decide whether or not the application meets the standards required to be formally accepted for examination. As part of the assessment as to whether it is acceptable, the Planning Inspectorate will ask local authorities affected by the proposal whether they believe that the pre-application consultation was adequate and conformed to the Planning Act 2008.

It is important at this stage to complain in writing to the promoters and the Planning Inspectorate if you do not think the consultation was adequate and the application should not be accepted. There will not be another chance for the general public to be consulted, and the only way that they can have any further say is if they register as objectors. The exception is at some issue specific and open floor hearings, examiners have, to date, allowed members of the public to speak at the hearings, but it must be noted that this is not guaranteed.

In exceptional cases where there's a clear breach of what was promised in the SOCC you may be able to secure a re-run of parts of the consultation and the chance to demonstrate larger public opposition to the plans. This is more likely if you can get the local authority on side and they agree that the consultation process was flawed.

Whether or not you can achieve this, not challenging the consultation at this stage could damage any legal case you might bring at the end of the process.



Pre-examination

Information

Once the application has been accepted for examination, all the application documents (which will be many) will be published on the Planning Inspectorate's website. At this point, you can start to scrutinise the information provided by the developers (normally Highways England) and start to build your case against the scheme. It is worth being prepared for this as the Examination process is very short and you will need all the time you can get.

The best way to deal with this overload of information is to split up the work into likely categories where you will have objections - e.g. traffic, landscape, air pollution, consideration of alternatives, compliance with local planning policies, social impacts, climate change - and take on a topic each where you agree to read the documents and briefly summarise any problems that are obvious, or questions you have where the documents aren't clear.

Registration

Within a few days of the acceptance of the scheme (but potentially up to several weeks later) the Planning Inspectorate will announce that the registration process is open. This will be done on their website, so you will need to keep an eye on it so that you can let people know when they can register and what the deadline is.



To register, people will need to provide a summary of their views of the application in writing (up to 500 words) and fill in a fairly straightforward online form with their personal details and a few questions about their involvement in the process. They will have at least 28 days to register. A good strategy at this point is to get as many local people as possible to register as individual objectors before the deadline, as well as making sure a number of representatives of your campaign register as objectors associated with your group.

Local people will have a range of reasons for opposing the scheme - it may create traffic in their village, or affect them with air quality or noise problems, or they may disagree with generating traffic in your area for wider environmental reasons. Submitting themselves as official objectors and putting down a summary may be daunting for them, however, so it is a good idea to provide (via your website or in leaflets) a few key points they could make in their submissions, and clear instructions for where to find the form on the site.

So that you can contact as many people who have registered as possible as the process continues, ask people to let you know they have objected.

A few days after the deadline for registration has passed, all representations will be published online.

Publication of letters

About a month after the publication of all the representations online, two letters will be published, sometimes separately, sometimes combined. The first letter (titled a rule 4 letter) will announce the appointment of an Examining Authority, either a single inspector or a Panel depending on the complexity of the scheme. The second letter (titled a rule 6 letter) will give 4 weeks' notice of the Preliminary meeting, an initial list of the principal issues and a draft Examination timetable. Everyone who has registered and made a relevant representation will be invited to attend the preliminary meeting run and chaired by the Examining Authority.

Preliminary meeting

At the preliminary meeting, the Examining Authority will describe how they intend to run the Examination and hear representations from statutory and registered objectors and the scheme promoters, about any concerns or suggestions they may have about the process.

This isn't a session where you can object about the scheme itself, but where you make the case for which issues you think are important or contentious enough for the Examining Authority to look at in more detail during the Examination, particularly if they are not included in the initial list of principal issues published in the rule 6 letter.

Along with the summaries of your objections that you submitted, what you say at this meeting will inform the questions the Examining Authority asks promoters (and objectors) to answer in their written submissions and which issues they decide to tackle in Issue-specific oral hearings.

The Examining Authority will also consider other practical details of the process, which you may want to influence. Key things you might ask for at the Preliminary meeting include:

- Additional 'principal issues' - the Examining Authority will have drawn up an initial list of issues they intend to look at in more detail and you can argue for more issues to be added.
- Open-floor hearings - these are a chance for people to have their say in a more open setting, even if they have not put in a written submission. The draft timetable may not include these, so make sure you request some.
- Timing of open-floor hearings - ensure these are held early on in the Examination so that there is time for any issues raised to be properly addressed.
- Venues of open floor hearings - ensure these hearings are held locally, in the actual areas affected and are accessible. This can help your campaign to get more people to attend than if they are all held in the Town Hall many miles away.
- Time of day - ask for at least one hearing to be held at a weekend or in the evening to make it more accessible to people with work commitments.

If you have a large number of points to make, it is a good idea to split up the work between members of your group, so that each person can make separate points. When doing this, tell the Examining Authority at the start of the meeting that this is how your group wishes to represent its points, and make sure each person states for the record that they are representing the campaign at the start of their 'speech'. The Examining Authority will not allow lots of repetition at this meeting, so make sure you avoid doing this.





It is important at this meeting to make sure the Examining Authority gets a good impression of your group, particularly in terms of it being representative of a significant number of local people. The number of registered objectors backing up your points in writing will help with this, but a useful tactic can be to make sure your supporters turn up in numbers to this meeting. People who are not registered as official objectors can attend, though they will not be allowed to speak, except at the discretion of the Examining Authority.

Although only a small number of you will speak and ask for things to be done, the seriousness with which the Examining Authority takes your group and its requests will be boosted by this silent show of strength. The first of your group to speak could ask for everyone who is attending in support of the group to stand up to emphasise this point!

Doing this may also affect how you are treated in future hearings - for example, if you are seen as the main representatives of local objectors you may be given a dedicated table for your papers or extra chances to respond to the promoters during the oral hearings.

Timetable

This pre-application stage of the process takes approximately 3 months in total from the acceptance of the application through to the Preliminary meeting.

Examination

The day after the Preliminary meeting, marks the start of the Examination which can last a maximum of 6 months. During this stage, people who have registered are invited to provide more details of their views in writing.

About a week after the Preliminary meeting, the Examining Authority will publish (in a rule 8 letter) their first set of written questions, a confirmed list of principal issues and a final timetable for the process.

A second set of written questions isn't a given and will depend on whether the Examining Authority believes that there are still outstanding issues that require further probing.

Written submissions

You will need to study the timetable carefully to make sure that you submit your detailed objections to the scheme, answer any questions asked of you, and rebut any criticisms of your evidence at the correct time.

With the help of experts and other local groups, you should have a long list of problems and issues to raise but the best ones to highlight (and the ones that will hold the most weight with the Examining Authority) tend to be:

- where the scheme appears to breach local planning policies or is not in conformity with National Policy Statements
- where the information and evidence backing up the scheme is inaccurate or vague
- where the scheme would have impacts not covered in the documents provided by the promoter
- where impacts would be more severe than claimed by the promoter (e.g. on wildlife, noise, landscape/ views, etc)
- where the scheme would make compliance with national targets or related European laws impossible (applicable to climate change gases and air pollution in many road schemes)

Issue-specific hearings

These are held where the Examining Authority is obliged to hold them or where it feels that a particular aspect of the application deserves closer scrutiny. Usually, the Examining Authority will issue a set of questions to guide debate at these hearings. These can range from a handful of high level queries to pages of detailed questions.

Those who have confirmed that they wish to speak at the hearings should normally be given a place at the table if they are part of an organisation and can then join in the debate, but taking care to only do so when called (you will need to indicate your desire to speak) and by addressing the Examining Authority and not the public.

Quite often, if time permits the Examining Authority will open up the debate to members of the public, whether registered or not.

All participants will be expected to summarise the points they make at the issue specific hearing and submit them in writing along with any additional evidence that they might have introduced. There will be a deadline for doing this which will be set out in the timetable (and probably mentioned at the hearing).

Open floor hearings

These are held to allow local communities to raise their concerns with the Examining Authority. They are open to the wider public, and while registered objectors will get priority to speak, anyone who turns up should be allowed to speak in theory, unless it is so busy and crowded that it isn't possible to accommodate everyone.

There should be several of these held for large road schemes and most should be held in the evenings or at weekends.

Decision

Planning Inspectorate report and recommendation

The Planning Inspectorate must prepare a report on the application to the relevant Secretary of State, including a recommendation, within 3 months of the examination period finishing.

Secretary of State's decision

The Secretary of State has 3 months to make the decision on whether to grant or refuse development consent after s/he has received the Examining Authority's report.

Post decision

Once a decision has been issued by the Secretary of State, there is a six week period in which the decision may be challenged in the High Court (Judicial Review).

Some Lessons - Good advice from David Gate, Transport Solutions for Lancaster & Morecambe (TSLM) based on his involvement with the Heysham – M6 Link Road, the first road to go through the new Nationally Significant Infrastructure Project planning process.

Evidence: always give evidence, not opinions. Everything depends on how much good quality material you get down on paper for the Examining Authority.

- Start asap!
- Do it, or find someone (an expert) who can do it.
- Work as a team
 - different subjects
 - have a uniform co-ordinator
 - ensure you're not pulling in different directions
 - agree politically on the aspects of the case you're putting
 - collect your own evidence

In the end, the strength of our position is what we wrote down & sent in.

We don't know all the answers, but in our written submissions we can ask many questions of the applicant, which the Examining Authority should then ask the applicant to answer.

You can't repeat what you have said in a written submission, but you can give more evidence on a topic to back-up your submission.

Look for their weak points

Look for their weak points, things they haven't fully described – what are they hiding? Be prepared to jump in and prove they're weak, e.g. incline of a link road was 9%, when mandatory standard is 8%. Where the applicant considers its case to be weak, it will often bring in consultants to make it less weak, and reduce the impact.

They didn't publish the plans, even though we asked for them specifically, over a long period. Finally, on the accompanied site visit, we mentioned it to the Examining Authority, and he asked them to provide plans.

Suspend trust

In our ordinary lives, we trust people, assume they're telling the truth.

At an Examination, the applicant (and consultants working for them) say what's in their interest, perhaps disguising the true facts, or hiding them – not telling the truth. Look for where they're lying

Things change - the world isn't static

- economic climate
- reduced traffic

Things change during the presentation of the applicant's case. They will always present the best version. We need to look at how things are changing and point out the changes.

Further Reading

Friends of the Earth produced a series of briefings on the (then) Major Infrastructure Projects process in early 2012. The examination functions have now been transferred to the Planning Inspectorate and the process renamed 'Nationally Significant Infrastructure Projects' but the advice and underlying law all remain the same, so these documents remain useful reading:

- Major Infrastructure Projects - [an overview](#)
- Pre-application process - [an overview](#)
- Registration process - [an overview](#)

More information about the Planning Act 2008, which controls the process, can be found in another [Friends of the Earth briefing](#) from 2010.