

Insights

NEW NSIP PRE-APPLICATION CONSULTATION RULES

WHAT TO EXPECT IN THE EMERGING NEW GUIDANCE

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SUMMARY

A government consultation published on 1 September (closing on 27 October) seeks views on new guidance to support the DCO process reforms in the forthcoming Planning and Infrastructure Bill (PIB). This blog focuses on what might be included in the new guidance on pre-application consultation and how applicants might be expected to approach it, once the requirement moves from a statutory to a non-statutory footing.

One of the key changes included in the PIB are the wholesale reforms to the DCO pre-application consultation process, with the PIB removing this statutory requirement. However, [the Government's consultation on streamlining infrastructure planning](#) states that "high-quality early, meaningful and constructive engagement and consultation" will still be expected with those affected by DCO proposals, and a new statutory requirement included in the PIB requires the Secretary of State to issue guidance on best practice to assist applicants.

Pre-application consultation therefore remains in place, but it moves from a statutory to a non-statutory footing with applicants to be supported by new statutory guidance. This government consultation seeks views on what might be included in the new guidance and provides an indication as to how applicants might be expected to approach pre-application consultation once the changes are introduced.

The PIB will also change the acceptance test, so the principal test on submission will be whether an application is 'suitable to proceed to examination', rather than of a 'satisfactory standard'. If needed, guidance will explain that pre-application consultation and engagement would not be a matter tested at acceptance. This seems to increase PINS' discretion, which could increase uncertainty for applicants as to whether their application would be accepted.

GETTING THE BALANCE RIGHT

This government consultation is therefore important as it will inform the new statutory guidance which will be critical in guiding applicants through the pre-application stage and support application preparations so they are of sufficient quality to be accepted on submission.

However, it acknowledges that its design is finely balanced. If the guidance is either too prescriptive or not detailed enough, it risks undermining the objective of this procedural change, which is to avoid lengthy, repetitive and disproportionate pre-application consultations that can delay submissions and don't always benefit DCO proposals.

EMERGING APPROACH

Whilst it stops short of consulting on proposed details, and the consultation document is clear that the final guidance will not be a step-by-step guide and specific examples of best practice will not be given, the approach to pre-application consultation and engagement is likely to support:

- Flexibility for applicants to judge how consultation should be best approached which will depend on the nature and impacts of the proposed scheme;
- Consideration of the nature and complexity of a proposal to determine what amounts to a proportionate consultation;
- Consultation on targeted and appropriate information with a focus on key areas of local concern-with consultation on extensive documents, materials and technical details avoided;
- Consultation should be carried out at a time early enough to inform a development proposal but when sufficient detail is available to enable impacts to be understood, but without creating unnecessary delay;
- Targeting certain statutory bodies early on for advice in preparing development proposals;
- Collaboration between applicants, stakeholders and statutory bodies to reduce delays;
- Ongoing engagement where appropriate, so an understanding of the project can be developed that benefits all parties.

The consultation covers other important changes to guidance to be explored in future blogs which includes notification and publicity requirements, application acceptance, use of Initial Assessments of Principal Issues and the role of public bodies in examinations. Also covered are proposed changes to regulations for the examination of applications including CPOs and some changes to PINS' pre-application services and the fast-track process, and resourcing of statutory bodies to support pre-application services.

COMMENT

The new guidance on pre-application consultation will be particularly important for DCO applicants currently in the early pre-application stage or anticipating promoting a DCO, and it may warrant a change in approach. Whilst its detail is not yet known, the emerging themes set out in this blog provide an indication as to what may be covered.

The current statutory framework in sections 42, 47 and 48 Planning Act 2008 has offered a clear framework for consultation since 2008. With the proposed new approach set to provide far less of a framework and therefore less certainty for applicants, it will present opportunities but also challenges to navigate.

Case law is already clear that each consultation must be proportionate and relevant to the particular project proposal in question, but it is hoped the emerging guidance will provide greater clarity as to what this means in practice. However, each applicant will need to continue to think carefully about its approach to consultation.

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