



Planning Act 2008

2008 CHAPTER 29

PART 6

DECIDING APPLICATIONS FOR ORDERS GRANTING DEVELOPMENT CONSENT

CHAPTER 4

EXAMINATION OF APPLICATIONS UNDER CHAPTER 2 OR 3

86 Chapter applies to examination by Panel or single Commissioner

- (1) This Chapter applies—
 - (a) in relation to the examination of an application by a Panel under Chapter 2, and
 - (b) in relation to the examination of an application by a single Commissioner under Chapter 3.
- (2) In this Chapter as it applies in relation to the examination of an application by a Panel under Chapter 2, “the Examining authority” means the Panel.
- (3) In this Chapter as it applies in relation to the examination of an application by a single Commissioner under Chapter 3, “the Examining authority” means the single Commissioner.

87 Examining authority to control examination of application

- (1) It is for the Examining authority to decide how to examine the application.
- (2) The Examining authority, in making any decision about how the application is to be examined, must—
 - (a) comply with—
 - (i) the following provisions of this Chapter, and
 - (ii) any rules made under section 97, and

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- (b) have regard to any guidance given by the Secretary of State, and any guidance given by the Commission, relevant to how the application is to be examined.
- (3) The Examining authority may in examining the application disregard representations if the Examining authority considers that the representations—
 - (a) are vexatious or frivolous,
 - (b) relate to the merits of policy set out in a national policy statement, or
 - (c) relate to compensation for compulsory acquisition of land or of an interest in or right over land.

88 Initial assessment of issues, and preliminary meeting

- (1) The Examining authority must make such an initial assessment of the principal issues arising on the application as the Examining authority thinks appropriate.
- (2) After making that assessment, the Examining authority must hold a meeting.
- (3) The Examining authority must invite to the meeting—
 - (a) the applicant, and
 - (b) each other interested party,
 whether or not the Examining authority is required by rules under section 97, or chooses, also to invite other persons.
- (4) The purposes of the meeting are—
 - (a) to enable invitees present at the meeting to make representations to the Examining authority about how the application should be examined,
 - (b) to discuss any other matter that the Examining authority wishes to discuss, and
 - (c) any other purpose that may be specified in rules under section 97.
- (5) Subsections (2) to (4) do not prevent the Examining authority holding other meetings.
- (6) Rules under section 97—
 - (a) may (in particular) make provision supplementing subsections (1) to (4), and
 - (b) must make provision as to when the assessment under subsection (1) is to be made and as to when the meeting required by subsection (2) is to be held.

89 Examining authority’s decisions about how application is to be examined

- (1) The Examining authority must in the light of the discussion at the meeting held under section 88(2) make such procedural decisions as the Examining authority thinks appropriate.
- (2) The decisions required by subsection (1) may be made at or after the meeting.
- (3) The Examining authority may make procedural decisions otherwise than as required by subsection (1), and may do so at any time before or after the meeting.
- (4) The Examining authority must inform each interested party of any procedural decision made by the Examining authority.
- (5) In this section “procedural decision” means a decision about how the application is to be examined.

90 Written representations

- (1) The Examining authority's examination of the application is to take the form of consideration of written representations about the application.
- (2) Subsection (1) has effect subject to—
 - (a) any requirement under section 91, 92 or 93 to cause a hearing to be held, and
 - (b) any decision by the Examining authority that any part of the examination is to take a form that is neither—
 - (i) consideration of written representations, nor
 - (ii) consideration of oral representations made at a hearing.
- (3) Rules under section 97 may (in particular) specify written representations about the application which are to be, or which may be or may not be, considered under subsection (1).

91 Hearings about specific issues

- (1) Subsections (2) and (3) apply where the Examining authority decides that it is necessary for the Examining authority's examination of the application to include the consideration of oral representations about a particular issue made at a hearing in order to ensure—
 - (a) adequate examination of the issue, or
 - (b) that an interested party has a fair chance to put the party's case.
- (2) The Examining authority must cause a hearing to be held for the purpose of receiving oral representations about the issue.
- (3) At the hearing, each interested party is entitled (subject to the Examining authority's powers of control over the conduct of the hearing) to make oral representations about the issue.
- (4) Where the Examining authority is a Panel acting under Chapter 2, any two or more hearings under subsection (2) may be held concurrently.

92 Compulsory acquisition hearings

- (1) This section applies where the application includes a request for an order granting development consent to authorise compulsory acquisition of land or of an interest in or right over land (a "compulsory acquisition request").
- (2) The Examining authority must fix, and cause each affected person to be informed of, the deadline by which an affected person must notify the Commission that the person wishes a compulsory acquisition hearing to be held.
- (3) If the Commission receives notification from at least one affected person before the deadline, the Examining authority must cause a compulsory acquisition hearing to be held.
- (4) At a compulsory acquisition hearing, the following are entitled (subject to the Examining authority's powers of control over the conduct of the hearing) to make oral representations about the compulsory acquisition request—
 - (a) the applicant;
 - (b) each affected person.

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- (5) A person is an “affected person” for the purposes of this section if the person’s name has been given to the Commission in a notice under section 59.

93 Open-floor hearings

- (1) The Examining authority must fix, and cause the interested parties to be informed of, the deadline by which an interested party must notify the Commission of the party’s wish to be heard at an open-floor hearing.
- (2) If the Commission receives notification from at least one interested party before the deadline, the Examining authority must cause an open-floor hearing to be held.
- (3) At an open-floor hearing, each interested party is entitled (subject to the Examining authority’s powers of control over the conduct of the hearing) to make oral representations about the application.

94 Hearings: general provisions

- (1) The following provisions of this section apply—
- (a) to a hearing under section 91(2),
 - (b) to a compulsory acquisition hearing (see section 92), and
 - (c) to an open-floor hearing (see section 93).
- (2) The hearing—
- (a) must be in public, and
 - (b) must be presided over by one or more of the members of the Panel or (as the case may be) the single Commissioner.
- (3) It is for the Examining authority to decide how the hearing is to be conducted.
- (4) In particular, it is for the Examining authority to decide—
- (a) whether a person making oral representations at the hearing may be questioned at the hearing by another person and, if so, the matters to which the questioning may relate;
 - (b) the amount of time to be allowed at the hearing—
 - (i) for the making of a person’s representations (including representations made in exercise of an entitlement under section 91(3), 92(4) or 93(3)), or
 - (ii) for any questioning by another person.
- (5) The Examining authority’s powers under subsections (3) and (4) are subject to—
- (a) subsection (2), and
 - (b) any rules made under section 97.
- (6) Although the Examining authority’s powers under subsections (3) and (4) may be exercised for the purpose of controlling exercise of an entitlement under section 91(3), 92(4) or 93(3), those powers may not be exercised so as to deprive the person entitled of all benefit of the entitlement.
- (7) In making decisions under subsection (4)(a), the Examining authority must apply the principle that any oral questioning of a person making representations at a hearing (whether the applicant or any other person) should be undertaken by the Examining

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authority except where the Examining authority thinks that oral questioning by another person is necessary in order to ensure—

- (a) adequate testing of any representations, or
 - (b) that a person has a fair chance to put the person's case.
- (8) The Examining authority may refuse to allow representations to be made at the hearing (including representations made in exercise of an entitlement under section 91(3), 92(4) or 93(3)) if the Examining authority considers that the representations—
- (a) are irrelevant, vexatious or frivolous,
 - (b) relate to the merits of policy set out in a national policy statement,
 - (c) repeat other representations already made (in any form and by any person), or
 - (d) relate to compensation for compulsory acquisition of land or of an interest in or right over land.

95 Hearings: disruption, supervision and costs

- (1) Where an interested party or any other person behaves in a disruptive manner at a hearing, the Examining authority may decide to do any one or more of the following—
- (a) exclude the person from all, or part, of the remainder of the hearing;
 - (b) allow the person to continue to attend the hearing only if the person complies with conditions specified by the Examining authority;
 - (c) exclude the person from other hearings;
 - (d) direct that the person is allowed to attend other hearings only if the person complies with conditions specified by the Examining authority.
- (2) In this section “hearing” means—
- (a) a preliminary meeting under section 88,
 - (b) a hearing under section 91(2),
 - (c) a compulsory acquisition hearing (see section 92),
 - (d) an open-floor hearing (see section 93),
 - (e) any other meeting or hearing that the Examining authority causes to be held for the purposes of the Examining authority's examination of the application, or
 - (f) a site visit.
- (3) The Examining authority's examination of the application is a statutory inquiry for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007 (c. 15) (functions etc. of Administrative Justice and Tribunals Council).
- (4) Subsection (5) of section 250 of the Local Government Act 1972 (c. 70) (provisions about costs applying where Minister causes a local inquiry to be held) applies in relation to the Examining authority's examination of the application as it applies in relation to an inquiry under that section, but with references to the Minister causing the inquiry to be held being read as references to the Examining authority.

This is subject to subsection (5) of this section.

- (5) Subsections (6) to (8) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) (provisions about expenses applying where Minister causes a local inquiry to be held) apply in relation to the Examining authority's examination of the application in so far as relating to a hearing held in Scotland as they apply in relation to an inquiry under that section, but with references to the Minister causing the inquiry to be held being read as references to the Examining authority.

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96 Representations not made orally may be made in writing

- (1) Subsection (2) applies where—
 - (a) a person asks the Examining authority to be allowed to make oral representations about the application at a hearing,
 - (b) the person does not (for whatever reason) make the representations orally at a hearing,
 - (c) written representations from the person are received by the Commission before the Examining authority completes the Examining authority's examination of the application, and
 - (d) the written representations state that they are ones that the person asked to be allowed to, but did not, make orally at a hearing.
- (2) The Examining authority must consider the written representations as part of the Examining authority's examination of the application, subject to section 87(3).

97 Procedure rules

- (1) The Lord Chancellor or (if subsection (2) applies) the Secretary of State, after consultation with the Administrative Justice and Tribunals Council, may make rules regulating the procedure to be followed in connection with the Examining authority's examination of the application.
- (2) This subsection applies if the development to which the application relates (or part of the development) is the construction (other than by a gas transporter) of an oil or gas cross-country pipe-line—
 - (a) one end of which is in England or Wales, and
 - (b) the other end of which is in Scotland.
- (3) Rules under subsection (1) may make provision for or in connection with authorising the Examining authority, alone or with others, to enter onto land, including land owned or occupied otherwise than by the applicant, for the purpose of inspecting the land as part of the Examining authority's examination of the application.
- (4) Rules under subsection (1) may regulate procedure in connection with matters preparatory to the Examining authority's examination of the application, and in connection with matters subsequent to the examination, as well as in connection with the conduct of the examination.
- (5) Power under this section to make rules includes power to make different provision for different purposes.
- (6) Power under this section to make rules is exercisable by statutory instrument.
- (7) A statutory instrument containing rules under this section is subject to annulment pursuant to a resolution of either House of Parliament.

98 Timetable for examining, and reporting on, application

- (1) The Examining authority is under a duty to complete the Examining authority's examination of the application by the end of the period of 6 months beginning with the day after the start day.

- (2) The start day is the day on which the meeting required by section 88 is held or, if that meeting is held on two or more days, the later or latest of those days.
- (3) In a case where the Examining authority is required to make a report to the Secretary of State under section 74(2)(b) or 83(2)(b), the Examining authority is under a duty to make its report by the end of the period of 3 months beginning with the day after the deadline for completion of its examination of the application.
- (4) The person appointed to chair the Commission may set a date for a deadline under this section that is later than the date for the time being set.
- (5) The power under subsection (4) may be exercised—
 - (a) more than once in relation to the same deadline;
 - (b) after the date for the time being set for the deadline.
- (6) Where the power under subsection (4) is exercised—
 - (a) the person exercising the power must notify the Secretary of State of what has been done and of the reasons for doing it, and
 - (b) the Commission’s report under paragraph 17 of Schedule 1 for the financial year in which the power is exercised must mention and explain what has been done.

99 Completion of Examining authority’s examination of application

When the Examining authority has completed its examination of the application, it must inform each of the interested parties of that fact.

100 Assessors

- (1) The person appointed to chair the Commission (“the chair”) may, at the request of the Examining authority, appoint a person to act as an assessor to assist the Examining authority in the Examining authority’s examination of the application.
- (2) A person may be appointed as an assessor only if it appears to the chair that the person has expertise that makes the person a suitable person to provide assistance to the Examining authority.

101 Legal advice and assistance

- (1) The person appointed to chair the Commission may, at the request of the Examining authority, appoint a barrister, solicitor or advocate to provide legal advice and assistance to the Examining authority in connection with its examination of the application.
- (2) The assistance that may be given by a person appointed under subsection (1) includes carrying out on behalf of the Examining authority any oral questioning of a person making representations at a hearing.

102 Interpretation of Chapter 4: “interested party” and other expressions

- (1) For the purposes of this Chapter, a person is an “interested party” if—
 - (a) the person is the applicant,

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- (b) the person is a statutory party,
 - (c) the person is a relevant local authority,
 - (d) the person is the Greater London Authority and the land is in Greater London,
or
 - (e) the person has made a relevant representation.
- (2) In this Chapter “representation” includes evidence, and references to the making of a representation include the giving of evidence.
- (3) In subsection (1) “statutory party” means a person specified in, or of a description specified in, regulations made by the Secretary of State.
- (4) A representation is a relevant representation for the purposes of subsection (1) to the extent that—
- (a) it is a representation about the application,
 - (b) it is made to the Commission in the prescribed form and manner,
 - (c) it is received by the Commission no later than the deadline that applies under section 56 to the person making it,
 - (d) it contains material of a prescribed description, and
 - (e) it does not contain—
 - (i) material about compensation for compulsory acquisition of land or of an interest in or right over land,
 - (ii) material about the merits of policy set out in a national policy statement, or
 - (iii) material that is vexatious or frivolous.
- (5) In subsection (1) “relevant local authority” means a local authority within subsection (6) or (7).
- (6) A local authority is within this subsection if the land is in the authority’s area.
- (7) A local authority (“A”) is within this subsection if—
- (a) the land is in the area of another local authority (“B”), and
 - (b) any part of the boundary of A’s area is also a part of the boundary of B’s area.
- (8) In subsections (5) to (7) “local authority” means—
- (a) a county council, or district council, in England;
 - (b) a London borough council;
 - (c) the Common Council of the City of London;
 - (d) the Council of the Isles of Scilly;
 - (e) a county council, or county borough council, in Wales;
 - (f) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39);
 - (g) a National Park authority;
 - (h) the Broads Authority.
- (9) In this section “the land” means the land to which the application relates or any part of that land.