

The Stevenage District Plan

How to object!

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What is a development plan?

This sheet has been produced to explain what the local plan is, and how you can take part in the process of its review. The Stevenage District Plan was placed 'on deposit' at the end of November. **The public have nine weeks to make comments - the period for objections ends on the 31st January 2000.** This may sound a long period of time. But with Christmas and the Millennium in between it does not leave a lot of time for putting your objections together.

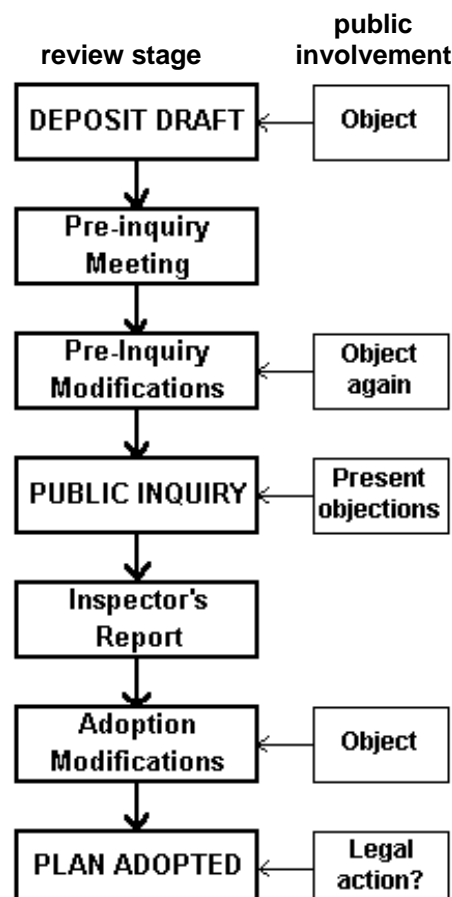
The *Town and Country Planning Act 1990* requires that local authorities prepare development plans in order to guide development in their area. In Hertfordshire the development plan consists of a 'local plans' for each district (prepared by each district), and a 'structure plan', 'minerals plan' and 'waste plan' prepared by the county council.

Local authorities must keep these plans under periodic review (usually around every five years). The great strength of the development plan review process is that *the public have statutory rights* of participation. Also, unlike nearly all other council consultations, the objections are considered by an 'independent' third party - a government appointed inspector. The Inspector is there to consider the evidence put before him (*and only that* - hence the importance of public participation) within the framework of national planning law and guidance. They are not representing any particular set of development interests.

You do not have to be legally or technically minded to take part in this process. All you need to be able to do is find something you strongly disagree with in the plan. Unlike other inquiries, written evidence carries the same weight as appearances in person. Therefore, if you make an objection, you don't have to turn up to the inquiry to make your objection. If you can appear in person that will more forcibly demonstrate the opposition to those particular parts of the plan.

The whole procedure of plan review is described in a Department of the Environment booklet entitled, '*Development Plans - What You Need to Know*'. This is also called '*the brown book*'. Copies of the *brown book* should be available from Stevenage Council. Or you can call the *DETR Free Publications Dept.* on 0870 1226236. What follows is a general description of the procedure.

The plan-making process



We are at the first official stage of the plan-making process. This process is defined in the *Development Plan Regulations 1991* (SI. 1991/2794). All the information and drafts produced by the council up to this point have been wholly internal - they have sat as judge and jury on the public's comments to this date. The **deposit draft** is different. This document carries legal weight - it is the document that will be the subject of investigation and debate at the public inquiry.

You must make your objections by the closing date. Only such 'duly made' objectors have a right to appear at the inquiry. Late objections can be considered, but this is at the discretion of the Inspector, and leave will only be given in unusual circumstances.

TWO IMPORTANT COMMENTS ON THE COUNCIL'S REPLY PROCEDURES:

1. The council have indicated that objections must relate to specific policies or paragraphs and general objections will not be accepted - while this is helpful it is not essential. The law recognises objections to the plan and does not specify the form such objections can take. For example, if the system only recognised objections to the content of the plan, you could not introduce new information. You should object to specific policies or paragraphs of the plan if you can. But if you disagree with the general principles of a section of the plan, and you do not feel able to explain this in a point-by-point way, feel free to make a general objection.
2. The council have indicated that only responses on the form provided will be accepted - there is no legal basis to enforce this. If you do not wish to complete the form you do not have to. But, if you chose not to complete the form, you should ensure that all the information that is requested on the form is provided (including giving space for the 'for office use' section at the top).

Once objections have been received, the council will catalogue and organise them. They should then invite the main objectors to informal meetings to discuss their objections in detail in order to reduce the time needed during the inquiry.

When the council have considered the objections they table amendments to the deposit draft - usually called **pre-inquiry modifications (PIMs)**. These again are an official document, and so a further six weeks must be allowed for 'counter-objections'. You should object to any PIMs that:

- Change the plan in a way you object to - even where you objected to that section of the plan previously;
- Where the council have tried to resolve your objection but have failed to address the important points;
- Where new information or proposals have been introduced into the plan that you object to.

Around the same time as the PIMs you will also have the **pre-inquiry meeting**. At the pre-inquiry meeting the Inspector will introduce himself and his staff. He will then outline his ideas for running the inquiry. This meeting is to consider the procedural aspects of the inquiry only - you do not raise any of your objections here. If you attend the meeting - which is not required of you - you should consider asking for evening sittings so that the public can attend, ensuring that you have access to the council documents in the inquiry library at convenient times, and that the photocopying charges are reasonable.

The most important section of the pre-inquiry meeting is the announcement of the dates of the inquiry, and the dates by which all '*proofs of evidence*' should be submitted. A *proof* is really just your longer written explanation of objection(s). **The most important part of the proof is detailing what you would like the inspector to do to resolve your objection. This**

should clearly outline an action - for example 'take X out of the plan' - but it need not be over detailed if you do not feel confident about providing explicit actions.

Next is the inquiry (see following section).

After the inquiry the Inspector will take away a lorry-load of documents and consider them. His conclusions are then written up in the **Inspector's report**. This is the council's report (it's not technically a public document). Although the council do not have to do what the inspector recommends, they must have really good reasons for not doing so or the Secretary of State could direct that the inquiry is reopened.

After considering the inspector's report, the council will produce the **adoption modifications** - either as a whole draft plan, or detailing the individual modifications they propose to make to the original deposit draft (often they produce both). Again, the council must give six weeks for public consultation. If there are no objections which raise insoluble technical or legal barriers to the adoption of the plan then the council may proceed and adopt the plan after the requisite notice has been given.

The purpose of the notice is so anyone who is not happy with the final content of the plan may commence a judicial review in the High Court to challenge the council's inclusion of certain policies or statements in the plan. If no legal proceedings are lodged, then on the day specified in the notice **the plan is adopted** and becomes part of the official development plan for the area.

Inquiry procedure

There are two ways to present your objection to the inquiry - *written representations* or an *oral presentation*. Just before the pre-inquiry meeting you will be contacted and asked if you wish to appear at the inquiry. Don't feel you have to say yes or no at that time. You can say yes and then withdraw at a later date if you run into problems.

Each inquiry has a programme officer who is the contact between the objectors and the Inspector (the Inspector does not have any contact with any objectors, and technically not even the council, outside of when the inquiry is sitting). You should keep in regular contact with the programme officer so that you can be told if the council issues new reports or documents to the inquiry. You can also find out if other objectors - for example developers - have withdrawn objections. The programme officer can also supply you with copies of the proofs/documents submitted by other objectors - in particular the developers proofs.

Oral presentations

The most important function of the programme officer is to programme objectors to appear at the inquiry. You will

be given a date and time to appear. If this is not suitable for some reason say so, and suggest some other dates that would be suitable. The programme officer should allow some flexibility for your appearance if you have work or childcare commitments.

To give your evidence orally, you submit your proof of evidence at the required time. Then, on the appointed day, you turn up, read it, and answer any cross-examination (questions) the council has. But the strength of the oral presentation is that the council must then give their evidence, and you get to ask them questions.

The actual procedure is the same as for ordinary planning inquiries. For each objection:

- First, the objector presents their case. They make an opening statement which outlines their case and the evidence they will present; **then either...**

The objector calls each of their witnesses to give their evidence. As each witness completes their evidence, the Inspector allows cross-examination from the council. At the end of this the inspector may put his own questions if there are issues not covered in the cross-examination. When the questioning is over, the witness is re-examined by the appellant (i.e., they try and get the witness to clarify why they made such an awful mistake in responding to questions). When all the witnesses have completed their evidence, the case for the objector is completed. **or...**

If the objector is representing themselves, they give their evidence, answer questions, and then the Inspector will ask some questions and/or ask if there is anything else they would like to say.
- Then the council present their case. They will make an opening statement, call witnesses, and each of the witnesses can be cross-examined.
- When both parties have done this, the inspector will ask the council and then the objector for closing submissions. All you have to do here is summarise your evidence, including any useful points made by the council in their case or during questions.

That then concludes the hearing of that objection in the inquiry. It will not be reopened in future.

Where there are many objectors on the same issue, it is procedurally possible for the council to hear and/or cross examine each objector one-after-the-other, and then respond to all in one go. This is faster, but if a number of those objectors decide to return - usually on a different day - and question the council that can create huge problems. Therefore, when council's chose this option, they will often segregate the 'difficult' from the 'ordinary' objectors.

Written representations

Writing a written rep. is no less arduous than writing a proof of evidence. You should apply the same effort.

However with a written rep. You don't have the problem of presenting it later.

After receiving the written rep. the council will, by a date agreed with the Inspector, produce a written response. You will be sent a copy of this response. If there are any inaccuracies or problems with the response you are usually allowed one further opportunity to write and correct the council's statement - and again the Inspector will seek a response from the council. After this the Inspector discourages further exchanges for fear of being caught up in a tennis-match of written exchanges.

Writing your evidence

Statements in public inquiries are generally referred to as 'proofs of evidence'. The 'proof' should contain a statement of your case to the inquiry, along with copies of maps, diagrams, references or quotes which 'prove' what you say to be correct.

There is a general requirement that where a proof/written rep. is longer than 1,500 words, a summary of 1,500 words or less must be provided. You have to provide as many copies of proofs/written rep. as the Inspector requires - this is usually stated at the pre-inquiry meeting. If you would have problems presenting the five or six copies usually required then go to the pre-inquiry meeting and argue that the council should provide cheap (at cost) photocopying for members of the public to taking part in the inquiry.

Finally, when planning your proof, remember that you will be cross-examined on any statement you make, and about any reference you include. That means that if you don't understand the issue you will not perform well. Also, in relation to references, never accept anyone else's interpretation of a reference or 'lift' quotes from other peoples text. You should always get a copy of the original document yourself, or get to see a copy in a library, in order to check that the extract you are making is within the context the author intended, and that there are no other contradictory statements elsewhere in the text.

The proof you submit before or at the beginning of the inquiry is not necessarily your last chance to submit evidence. You can submit '*supplementary proofs*' at other times. This is usually because:

- Once you have submitted evidence before the inquiry you find a lot of incorrect material in the councils proofs which you need to comment upon;
- New information is submitted by the council or other objectors (usually developers) during the course of the inquiry;
- The inspector asks for clarification of particular issues raised when he opens the inquiry;
- There has been some change in circumstances between the writing of the proof, and the inquiry - this is usually the case where inquiries have been

adjourned for a month or two and events have moved on during the adjournment.

The same considerations apply to writing supplementary proofs as they do to writing the main proof.

Referencing

As noted earlier you need to be careful when selecting your references. If you can get a list of the 'core documents' held in the inquiry library (ask the council if they have a draft copy at the pre-inquiry meeting and/or shortly before the date for submitting proofs) then you are free to quote these without having to provide copies. If you reference any other document you should provide copies of the extracts with your proof so that the Inspector has all the material to hand. If you do not, the Inspector may ask you for a copy.

The important thing to remember is that inspectors will only determine the case on the evidence that is put before them - they will not search around and find their own reference material to back up any particular decision they want to make. That means it is up to you to give the Inspector the necessary information to let him make the decision you want.

Cross-examination

This is the thing ordinary people fear the most about public inquiries - that they will be pressured by nasty barristers and make mistakes. In reality a particularly nasty barrister can do that, but they themselves have deep flaws which you can exploit too.

In any case, councils will not normally seek to cross-examine ordinary members of the public, unless they make a really good case against them. Inspectors too don't like it because it uses a lot of inquiry time and intimidates members of the public. Councils usually only seek to cross-examine those with relevant professional qualifications to the issue under discussion.

The case at a public inquiry is normally presented by a barrister or solicitor. It is very rare that the appellant's consultants will question directly. This means that the person asking you the questions:

- Does not have a lot of technical knowledge of the issue under discussion, particularly once you get off the everyday issues discussed at inquiries;
- Does not have the necessary local knowledge to be able to understand local issues properly (I've seen many barristers embarrassed by local people in this way);
- Does not necessarily understand the answer you give - and hence they go off on a complete tangent in their questioning which makes them look a complete fool.

The other important issue is that cross-examination should relate fairly to your proof, or to comments you make in response to a question. This means if you select your issues well, to reflect your own strengths, you stand a better chance of giving a convincing performance.

The golden rule to remember when being cross-examined is to take your time. Some of the most successful witnesses I've seen in public inquiries are those who have forced the barrister to go at their speed - this often throws the barrister because it disrupts their timing or, more often, frustrates them until they explode.

The other thing to remember is to always ask for clarification if you don't understand a question. You should not be asked to comment upon information or documents you have never read. If they insist on referring to documents that you haven't heard of tell them that, and ask them to give you a copy there and then so that you can check it yourself. This is quite useful not only because it breaks up the barristers timing, but you can often find inaccuracies or different arguments in the documents they are quoting. If you're having difficulties a good barrister will spot this and hammer you - in these situations honesty and common sense answers rather than bluff are often the best way to disarm the attack.

The other main thing to remember when answering questions, questioning witnesses, and especially during your closing statement, is to speak slowly and clearly. This is not for the benefit of the appellant - it's so the Inspector can precisely note down the question and the response. Remember - you're not running against the clock. In the inquiry you should be given a reasonable time to ask and answer questions.

In conclusion

In terms of decision-making systems that involve the public, the public inquiry system is pretty useless. If anything the 'official' and 'courtroom' type situation it generates puts the public off. But, for now, it's all we have as a means of examining development proposals in detail - so we have to use it until something better comes along.

Finally, I cannot under-emphasise the value of public inquiries as a learning experience. If you really want to learn an issue then jumping into the middle of a public inquiry is a good way to start. What goes on in a public inquiry is pretty much the highest level of technical public debate on a particular issue. If you can get copies of everyone's proofs and listen to the debate you will pick up an awful lot of important information very quickly. In terms of working at the local level with councils and government agencies, the level of debate at a public inquiry is often of higher quality than they use their everyday work. If you can pick-up on issues here, you'll make a bigger impact in the everyday issues.