

## **Top Tips for Local Planning Authorities – Independent Examination of a neighbourhood plan or a neighbourhood development order (including a community right to build order)**

NPIERS was established in January 2013 to enable Local Planning Authorities and Qualifying Bodies to source independent Examiners for neighbourhood plans and orders. NPIERS has to date dealt with over 40 applications for Examiners.

The following “top tips” are drawn from learning experiences and feedback obtained to date from Examiners, Local Planning Authorities (LPAs) and Qualifying Bodies (QBs).

The “tips” below are numbered only for reference.

### Appointing an Independent Examiner

1. You should be thinking about sourcing an Examiner once a draft neighbourhood plan or order has gone through its pre-submission consultation.
2. If tendering for an Independent Examiner, make sure that the brief contains the expected outputs as defined by the legislation and legal requirements that an Independent Examiner must meet.
3. Many potential Examiners will be independent consultants and do not carry high levels of professional indemnity insurance. Be realistic when considering the level of risk associated with an examination.
4. The LPA and QB should be jointly involved in sourcing an Independent Examiner.
5. If applying to NPIERS for names of potential Examiners, then ideally both the LPA and QB should be involved in completing the application form. The LPA is responsible for making the appointment, but the QB has to agree to it.
6. To assist NPIERS with matching suitable potential examiners for your Plan or Order, please provide as much relevant information as possible when making your application. Consider key issues and highlight any particular areas of expertise required relevant to the plan or order in question for example heritage, flood risk or economic development.

### Selecting potential Independent Examiners

7. NPIERS will provide both the LPA and QB with the potential examiners' CV, photo and their response to being invited for referral. From experience, this information has usually been sufficient to enable you to make a decision on selecting a suitable Examiner.
8. If you would like to ask the potential Examiner questions regarding process, consider using video/telephone interview when possible to keep costs down, unless the LPA is willing to cover the costs of travel. Note – also that it may not be economic for a potential Examiner to travel to attend a face-to-face interview for a job that could last just a few days.
9. The LPA should explain the procurement procedure to the QB in advance of selecting an independent Examiner. If you do interview potential examiner/s, the interview should be solely about whether an Examiner has the skills and relevant experience required to undertake the examination. The merits of a specific plan or order must not be discussed.
10. If an interview is considered essential, a representative from both the LPA and the QB should ideally be present during the interview. Note – it is good practice to provide constructive feedback to unsuccessful candidates. Such feedback will help examiners to decide whether to revise their CVs and provide fully informative answers to questions put to them in future referrals/interviews.

### Preparing for the Examination

11. Remember, the contract is between the Examiner and the LPA. There should be one point of contact when discussing process with the Examiner working through the LPA.
12. Make sure all documentation demonstrating that all procedural steps have been undertaken is made available at the outset of the Examiner's work. The LPA (and QB) should assemble and supply full documentation, background material and evidence. The examiner should not have to request it.
13. In the case of Orders there should be absolute clarity regarding documentation forming part of the Order and any exclusion of properties.
14. If the Examiner decides to hold a public hearing, it should be advertised appropriately, typically 28 days. It is useful for the Examiner to produce a Hearing Procedure Note, which he should make available to all relevant stakeholders. The Note should cover:
  - a. Venue and timings
  - b. Who has been invited to speak and why
  - c. Social media coverage
  - d. Filming

- e. House rules
15. If possible, ensure there is a dedicated 'Programme Officer' to manage the process and act as a point of contact for the Examiner, and
    - a. Agree how the Programme Officer and Examiner will work together and ideally using email to resolve any issues/provide clarification
    - b. The Programme Officer will manage any logistics if a hearing is held (room arrangements, microphones, parking for participants etc.).
    - c. If a hearing is required by the Examiner, the venue should ideally be in the neighbourhood area unless it would be impractical to do so.
    - d. Provide the Examiner with a complete document library including electronic links
  16. Be clear about who is doing what – LPA / Examiner if a hearing is held
  17. If an appointed Examiner, LPA and QB meet before the examination begins, they should only discuss administrative arrangements including contracting and invoicing, and the logistics of the examination (e.g. how it is going to proceed and relevant timetables); the merits of a plan or order must not be discussed.
  18. Discuss and agree the Council's role at the hearing (if there is one) in advance with the qualifying body and the Examiner.
  19. Site visits – the default position for an Examiner would be to visit the area which is under examination. In order to safeguard the perception as well as the reality of independence of the Examiner, site visits will normally be unaccompanied unless the Examiner needs to gain specific access
    - a. Details of site visits should be covered in the report
    - b. The Examiner should only ask factual questions for example to site boundaries if accompanied.

Handling representations, inviting further representations and handling late representations – a consistent NPIERS approach

20. Provide information on what the representations need to address and explain the basic conditions and other legal tests that a neighbourhood plan or order will be examined against.
21. Emphasise the deadline for making representations where appropriate.

22. The Examiner should set ground rules for dealing with late representations on a case by case basis. In any case, late representation should be accompanied with a summary so that the Examiner can decide its importance/relevance and whether it should be considered.
23. If, for exceptional reasons, a late representation has been allowed – it is vital that all parties are able to see and make comment.
24. Set out, in advance, how a neighbourhood plan or order examination differs from a Local Plan examination, and thus what representation will, or will not, be relevant.
25. The LPA should make representations public (and ensure appropriate information on this is available to address data protection) – to avoid getting representations about previously submitted representations.

#### Duration of Examination and post examination project planning

26. Experience to date suggests that a typical written representations only examination will take about 4 – 6 days to complete.
27. Where a public hearing has been required by Examiners, the amount of time required to complete the examination has generally been 9 – 11 days.
28. Be realistic regarding timescale. Many of the potential Examiners are consultants and are not likely to work full time on the Examination. Please don't assume that the report will be completed one week after the appointment if the Examiner advised that it would take 7 days to complete.
29. When there has been no up to date Local Plan in place, this seems to add 2/3 days to the overall time.
30. When project planning, it is recommended that you work backwards from a preferred referendum date. An indicative time period for the examination will assist NPIERS in identifying available potential examiners.
31. Give early consideration to how decisions will be taken by the authority for example think about the impact that committee cycles may have on timing.
32. Plan in advance any steps necessary to ensure delegated powers are in place for the stages when council decisions are made.
33. Take a view on whether to accommodate a 6 week legal challenge periods into your project planning.