A Development Consent Order (DCO) authorises the development of Nationally Significant Infrastructure Project (NSIP)\(^1\). Decisions on such applications are made by the Secretary of State (SoS) relevant to that NSIP (e.g. transport or energy and climate change).

Examinations in Public are the process by which an application for Development Consent is assessed so that the SoS can make their decision on whether a DCO will be made.

An Examination is carried out by an Inspector or Panel of Inspectors in a similar way to a planning appeal or Development Plan Examination. The Inspector or Panel is referred to as the ‘Examining Authority’ (ExA), and are appointed by the SoS. This process is administered by the Planning Inspectorate (PINS).

Before an Examination begins, an applicant will have informed PINS of their intention to submit an application. Immediately after this they will have carried out at least one stage of public consultation. The applicant would then prepare and submit their application. If the application is adequate it will be ‘accepted’ for Examination by PINS.

The Examination starts the day after the Pre-Examination Meeting at which the ExA discusses the forthcoming process, including the timetable. The Examination lasts for no more than six months following which the ExA has a period of three months to prepare recommendations to the SoS.

Over 40 applications are either currently going through, or have been through, the Examination process and therefore there is an opportunity to learn lessons from these applications.

The Examination is primarily a written process, but if the ExA wants to delve more deeply into a particular topic may hold one or more hearing sessions. The Applicant and other interested parties, such as statutory consultees (e.g. Natural England, English Heritage, Environment Agency or Highways Agency), will be invited to attend. The topics discussed are decided entirely by the ExA depending on what they consider to be the key issues for the application – this can be informed by the interests and experience of the Inspector or Inspectors making up the ExA.

The principle of the development is rarely the focus of the Examination.

Some examples of experiences of Parsons Brinckerhoff expert witnesses are described below.

During the A30 Temple to Higher Carblake Improvement Scheme Examination, the environmental topic-specific hearings related to ecology and landscape impact. The site was partly within the Cornwall Area of Outstanding Natural Beauty and Bodmin North Site of Special Scientific Interest. There was also a range of European Protected Species which were potentially affected by the Scheme. The ExA (and Natural England) therefore needed to be confident that these issues had been fully explored and that appropriate mitigation was guaranteed.

The Construction Environmental Management Plan (CEMP) was prepared in much more detail than normally required at the application stage to reassure the ExA that appropriate mitigation would be delivered. This included measures to reduce noise and dust impacts on local residents and sensitive ecological receptors. It also included pollution control measures to protect water quality and a variety of other measures.
The main issue in the Examination of the Progress Power Project was the loss of historic field boundaries. The location of the substation in an area of potentially historic hedgerows dominated hearings, with the Council and local parties (Eye Airfield Parishes Working Group) taking the view that the hedges were potentially of national significance and should be preserved in-situ.

The scope of the setting assessment for cultural heritage assets, originally agreed with the Council and County Archaeologist, was limited to individual setting assessments for Grade I and II* assets, and Grade II would be assessed as a group. The setting assessment was re-written prior to the hearings to address various comments. This shows that even though something is agreed at scoping, it can be changed and updated throughout the examination and Statements of Common Ground are invaluable to iron out any points of disagreement.

A considerable amount of the Progress Power Examination also concentrated on the detailed design (or lack of it, which is usual for this type of project). Driven by a local interested party, a lot of time was spent going over the need for various elements of the design to be agreed. These local parties wanted the design to be clarified so that all unnecessary detail could be removed from the DCO, significantly limiting the options within the Rochdale envelope (the parameters limiting the proposed scheme in terms of size so that it can be properly assessed whilst allowing some flexibility for the designer). This led to a lot of ad hoc design which was then incorporated into the DCO.

From these examples, it is clear that the Examination process is unpredictable and driven by many different factors. Statutory Consultees and Third Parties will also influence which topics become important, and not just the interests of the ExA.

Further details on the process can be found on the National Infrastructure Planning website: http://infrastructure.planningportal.gov.uk/application-process/the-process/

Further details on the Planning Inspectorate’s role be found here: http://infrastructure.planningportal.gov.uk/application-process/planning-inspectorate-role/

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1 NSIPs are defined in the Planning Act 2008 as amended.