

SECTION 3: GUIDELINES FOR AREA OFFICERS DEALING WITH PRE-ORDER CONSULTATIONS AND STATUTORY ORDERS ON BEHALF OF THE SOCIETY**1 INTRODUCTION**

- 1.1 The Society is specified in the Public Path Orders Regulations 1993 (PPOR 1993) as a statutory consultee in relation to proposed changes to the path network within the area covered by the Society.
- 1.2 In the context of this document the Consultation & Orders Manager (COM) and the team of Assessors based at Taylor House act as Area Officer (AO) for all order-making authorities (OMAs) where a dedicated AO has not been appointed (see appendices 1 and 2 for allocation of AO areas of responsibility).
- 1.3 What follows is a description of the assessment procedure, which should be carried out in accordance with the policies of the Society. Each AO may find it useful to have a copy of the Assessment Handbook (February 2005, currently under review) and a copy of "Rights of Way: a guide to law and practice" 4th edition (Blue Book).

2 ADDRESS FOR SERVICE

- 2.1 The Society's address for service is not specified in the Regulations (PPOR 1993) – the address for service is Taylor House or the AO's home address as appropriate.
- 2.2 Where correspondence that should go to the AO is received at Taylor House it will be forwarded to the AO promptly.

3 RECORDING OF INCOMING MAIL

- 3.1 A permanent record of each pre-order consultation and statutory order must be kept. This may be in the form of a file copy (either hardcopy or electronic) or a post-book, which should contain the date of receipt, the addressor, the subject matter and the name of the person to whom it has been referred for action.
- 3.2 Care is needed in recording the subject matter as one letter may cover two or more orders. Each order should be separately recorded.
- 3.3 Correspondence largely falls into two groups – pre-order consultations (POC) and orders. Occasionally an order making authority (OMA) may send us a creation agreement but these are rare. The essential difference between POCs and orders is that POCs have no statutory force. A failure to meet a time limit, for example, is fatal on an order but not on a POC.

4 RECORD KEEPING

- 4.1 The AO should open a file (this may be a hardcopy or electronic as appropriate) on receipt of the first piece of correspondence and, subject to the proviso at the end of this paragraph, should retain that file in his/her physical possession until the order is confirmed or in the case of an objection until the matter reaches public inquiry stage, when the file will go to the Courts and Inquiries Officer (C&IO) to conduct the Society's case at the inquiry. After the Inquiry the AO will resume control of the file until final determination of the order, when he/she will pass it to the Consultation and orders Manager (COM). An AO will have the option of returning the file to the COM at any stage should he/she wish to do so.

5 PRE-ORDER CONSULTATIONS BY OMAs

- 5.1 OMAs are under no obligation to consult the Society but it makes good sense to do so. Invariably we are asked to respond by a stated date. Whilst we are not bound by that date it is helpful and courteous to meet the OMA's request.
- 5.2 The guiding principle is that the Society should make its point as early in the process as possible, on the basis that representations are more likely to be effective whilst proposals are still fluid.
- 5.3 The extreme case is that we do not respond to a POC, the order is subsequently made, and we then lodge an objection on grounds we should have mentioned at consultation. In that situation the Society would be likely to attract criticism.

6 CONSULTATIONS BY OTHER PERSONS AND BODIES

- 6.1 It is not uncommon for applicants for an order to consult the Society before the OMA formulates any proposals.
- 6.2 It is advantageous to establish a good working relationship with an applicant and the Society is much more likely to achieve its objective if it participates in the process at the earliest possible stage, preferably before the applicant/developer has spent serious money.
- 6.3 Whilst a positive response should be made to proposals, on no account should an applicant be told, either expressly or by implication, that the Society is unlikely to object.

7 ASSESSMENT OF THE PRE-ORDER CONSULTATION

- 7.1 All POCs should be forwarded to the local Inspector, even if objection is unlikely.
- 7.2 The AO should carry out the inspection, or request a report from a "flying squad Inspector", if there is no local Inspector appointed by the Society.

8 THE ROLE OF THE INSPECTOR

- 8.1 When the proposal is referred to an Inspector, his/her attention should be drawn to the date by which the OMA has asked for a response, with a request that this be complied with if possible. If the Inspector sees any difficulty in meeting the time limit an extension should be asked for. The Inspector will be asked for a report that covers, as a minimum:
 - whether or not the Society should object, stating the grounds of objection
 - any suggested improvements to the proposals
 - any conditions attached to the Society's consent e.g. waymarking, surface and width of path, form of furniture.
- 8.2 A record should be made of the date a response from the Inspector is due and/or the expiry of the OMA's time limit, to ensure it is not overlooked.
- 8.3 It is good practice to accept reports from Inspectors by telephone where the report is 'no objection.' This is done to keep the amount of paperwork from Inspectors to a minimum.
- 8.4 If the report contains anything else (e.g. the Inspector asks that conditions be fulfilled or raises an objection) it must be in writing.
- 8.5 It is important to ensure that Inspectors are kept fully informed of the progress of proposals that affect their patch.

9 RESPONSE TO PRE-ORDER CONSULTATIONS BY OMAs

- 9.1 The AO will respond to the OMA's consultation letter, basing that response either on the Inspector's report or on his/her own observations or on material from any other source e.g. members of the public. It may be necessary to edit out of the Inspector's report material that is not relevant to the principles governing the making of orders. If appropriate, such material can be the subject of a separate communication.

10 ASSESSMENT OF STATUTORY ORDERS

- 10.1 On receipt of notice of the making of an order, the first task is to ensure that the OMA has sent everything to which we are entitled i.e. a copy of the order and map and the notice of the making of the order. It is not unknown for an OMA to fail to include a copy of the order and map. If that happens an objection should be lodged immediately on procedural grounds. Sometimes an OMA sends a statement of reasons for making the order. These vary in quality and helpfulness. A full and closely reasoned statement makes our job much easier, but sadly these are rare.
- 10.2 The second task is to examine the file to ascertain if the Society has been consulted and if so what the response was. In the absence of good reason the response to the making of the order should be the same as it was to the POC. The local Inspector should be sent copies of the documents, even though he raised no objection at POC stage. He is thus kept informed of what is happening on his patch and if the situation has changed he may now wish to change his stance. If a further site inspection is thought necessary this should be requested.
- 10.3 If a report is needed from the Inspector he should be made aware of the time limit for lodging objections and of the date his report must reach the AO, to give sufficient time for the AO to make representations to the OMA within that time limit.
- 10.4 A failure to lodge an objection within the time limit is fatal – we can assume there will be no extension. If there has been an objection at POC stage the AO can immediately lodge an objection based on what was said at POC. This will stop time running against us. Should further grounds of objection need to be added this could be done later, even after the time limit has expired.
- 10.5 The crucial point is to stop time running against the Society. If the AO considers, on examining the papers, that it looks suspiciously like a case where the Society might object, then he/she must lodge a holding objection immediately i.e. before the papers go to the Inspector. When an objection is lodged, the grounds therefore should be stated. Without a report from the Inspector it will not be possible to state the grounds in full. The AO should therefore use his/her judgement in formulating grounds at the outset, reserving the right to add to those grounds later.
- 10.6 Again, a record/diary note should be made of the date the Inspector's report is required.

11 RESPONSE TO STATUTORY ORDERS

- 11.1 The OMA must be informed of the Society's stance on each order, whether or not that stance has changed since POC.
- 11.2 Where there is an objection, the relevant Courts and Inquiries Officer **MUST** be consulted and agree the grounds for the objection.

12 PUBLIC INQUIRIES

- 12.1 When the inquiry stage is reached the assessment process is at an end and the file is referred to the appropriate Courts and Inquiries Officer.

13 ARCHIVING

- 13.1 Unless the AO prefers to return the file to Taylor House the AO will retain the file until the order is confirmed, confirmation is refused, or the OMA withdraws the order. At that stage the complete file must be sent to the COM, who will acknowledge receipt.
- 13.2 If the COM has not responded within 14 days, enquiry must be made to ensure the file has been safely received.
- 13.3 At present all archive files will be kept as hardcopy at Taylor House.

14 STATISTICS

- 14.1 Under review.

15 PLANNING APPLICATIONS

- 15.1 Local planning authorities (LPAs) are not obliged to consult the Society on planning applications, even if the proposed development will impact on a public path. Many LPAs do in fact consult. The first step is to ascertain if a path will be affected by the development.
- 15.2 In the event that a path or paths are affected the Society may make representations, and these representations can include an objection.

16 CO-OPERATION WITH OTHER GROUPS

- 16.1 It is of course the Society's policy to co-operate with all groups having the same or allied objectives.
- 16.2 It does, however, sometimes happen that another group, or an individual member of the Society, takes a different line from that adopted by the Society e.g. by wishing to object when the Society sees no grounds to do so or has insufficient resource to follow through on an objection.
- 16.3 All requests for support in these circumstances should be passed to the Chairman. The Society's response will be discussed and agreed by the Legal & Policy Committee. The formal response to the individual or group will be communicated in writing by the Chairman.