

Wildlife and Countryside Link
17 December 2021

**National Infrastructure Planning Reform Programme:
Review of Nationally Significant Infrastructure Projects process consultation**

Response to be submitted online via survey and also via email

Wildlife and Countryside Link (Link) is the largest environment and wildlife coalition in England, bringing together 65 organisations to use their strong joint voice for the protection of nature. The following members have signed onto this response: Buglife, Butterfly Conservation, CIEEM, CPRE – The countryside charity, Friends of the Earth, Open Spaces Society, RSPB, Woodland Trust, the Wildlife Trusts.

Many of our members have been engaged in the NSIPs regime from its conception in the White Paper of 2007 and the Planning Act 2008 to the present day. Although none of our members are members of NIPA, we have considerable experience of how the system works from the perspective of the environment, charity and community sectors. This experience spans every part of the NSIP process, from engaging in initial screening and scoping, through the pre-application and consultation processes to the formal giving of evidence.

The Government's overriding concern with the NSIP regime appears to be accelerating the speed of the process. However, a number of recent court decisions which have overturned Development Consent Orders have highlighted flaws in the decision-making process, and while we welcome recognition of the need to drive progress towards net zero, a key outcome for the NSIP regime must be considered robust decisions, which clearly takes account of the need for nature-positive developments and truly aids progress towards net zero, not just the speed of decision-making. Only a system which delivers this will be fit for the nature and climate emergency we face.

The experience of Link members is that the NSIP process is often extremely challenging to navigate and work within, especially when their resources and ability to fully engage is very limited compared to applicants. This leaves many with the perception that developers are gaming the system, knowing civil society will not be able to keep up. We refer to some of the problems encountered in answer to the questions below.

Link members are clear that their frustrations and inability to fully engage is not due to the Planning Inspectorate (PINs), but the process itself which PINs must follow. However, we recommend that acceptance of new information and change applications even at very late stages is reconsidered to improve the process and ensure it is as front loaded as intended (see question 4 below).

A number of individual Link members will be making more detailed submissions to the consultation. In this response, we focus on questions 3, 4, 8 and 9 below.

3. What could government, its arms-length bodies and other statutory bodies do to accelerate the speed at which NSIP applications can be prepared and more generally to enhance the quality of submissions?
(no more than 300 words)

Possibly the single most important thing that government can do is give the right policy direction in National Policy Statements and ensure those statements are fit for the nature and climate emergency. We welcome the commitment by BEIS to review the Energy NPS and by DfT to review the National Networks NPS. Other departments need to follow suit across the full range of NPSs. NPSs need to be prepared for all NSIPs to provide a policy framework that will help to ensure positive outcomes for nature and the climate. Business and commercial developments, such as the London Resort, are not genuinely nationally significant infrastructure and should not be determined through the NSIP process.

However, despite the welcomed review, following the recent consultation we seriously doubt that the draft Energy NPSs will be fit for purpose (please see attached our submission to the recent consultation). For example, without an adequate system of marine spatial planning which directs NSIPs to the least ecologically-damaging locations, it is highly likely that there will continue to be significant negative impacts on marine biodiversity. In addition, there are several areas of conflict between the Energy NPS and other government policy and guidance leading to confusion and challenges for the Examiners when those conflicts are highlighted.

At the project level, allowing all, not just Councils and statutory agencies, who speak up for the environment to play a full role in the NSIP regime is a crucial means of fulfilling public participation requirements and ensuring that outcomes take account of all relevant information and can fully consider nature and the climate, including specific local environmental issues and concerns.

At the screening, scoping and pre-application stages we find there is insufficient detail and engagement by developers to enable key issues to be flagged and where possible solved in advance of the application being submitted. In addition, meaningful specific engagement with the local communities is often absent. This includes failure to acknowledge the seriousness of concerns raised by stakeholders which of course then means none are considered and solved and more examination process time is required which can lead to subsequent delays, such as at Able Marine Energy Park and A27 Arundel Bypass.

Clearly, this is primarily the responsibility of the developer, who needs to have early and open engagement with the general public, local communities, local planning authorities, statutory bodies and stakeholder organisations such as ourselves. This needs to be a genuine opportunity to consider options, suggest changes and influence proposals, so the developer needs to be willing to amend proposals, provide solutions or additional information in the light of comments received. Developers could be obliged to provide or fund an independent stakeholder engagement lead to facilitate community and stakeholder consultation. Clearer website signposting, 3D visualisations and imagery would also be helpful for public engagement. The pre-application stage is the best opportunity for this dialogue because once the formal NSIP process starts, the timetable is very demanding for stakeholders and the developers are much less willing to make changes.

The role of local planning authorities in supporting communities has the potential to be enhanced. Communities rely on the support of their local planning authority, and expect them to ensure decisions are sustainable for their local area. However, this is often not the case, with many communities finding

their local planning authority is dismissive of their concerns as they are not the decision-maker for NSIPs. Local planning authorities should be resourced and funded to support local groups and communities engaging with the process and provide necessary information to elected Members to disseminate information to their constituents. They should also direct people from their website to the PINS project website and publish their Statement of Community Consultation comments and Local Impact Report for transparency with their community. Local Impact Reports should reflect the full range of views within the local community, not just the local planning authority's view, and should be mandatory rather than discretionary.

The Planning Inspectorate of course plays the most important role in the process but needs sufficient time to assess the quality of submissions and be prepared to be robust in rejecting those which fall below standard or come late in the process with impacts to all involved including the statutory bodies. With additional funding, there could be a greater role for PINS in providing guidance and without prejudice pre-application advice to developers on the quality of submissions, similar to the applicants' required engagement with e.g. the Councils, Natural England or the Environment Agency at the screening and scoping stage. PINS' website is filled with helpful advice and guidance as well as advice given directly to those involved in the Examination. However as mentioned above PINS is at times restricted and once the formal Examination starts, any changes, no matter how small, can often lead to multiple documents needing to be updated and put extra strain on the process.

4. Following submission, are there any aspects of the examination and decision process which might be enhanced, and how might these be improved? (no more than 300 words)

During the post-application and examination period we have encountered persistent submission of additional or amended information, leaving stakeholders struggling to respond (e.g. most offshore wind farms, Wylfa nuclear power station). The Examination timetable is demanding enough due to the volume of work involved and when combined with additional and amended information becomes almost impossible to keep up and effectively engage.

This issue could be largely resolved by the submission of high-quality applications which have been subject to thorough consultation (see above). While we recognise that some changes to proposals or the provision of new information after submission is of course unavoidable, these should be treated as exceptions to the norm and additional time must be made available for interested parties to properly evaluate them. The length of time should be based on the scale of the amendments and supporting information. In most cases, post-application changes should be strongly discouraged by the Planning Inspectorate.

5. Where a development consent order has been made, what impediments are there to physically implementing a project which could be removed? (no more than 300 words)

No comment [suggest that where there is no comment, the question is deleted before submission]

6. How might digitalisation support the wider improvements to the regime, for example are there any specific aspects that you feel could benefit from digital enhancements? (no more than 300 words)

No comment.

7. What issues are affecting current NSIPs that would benefit from enhanced cross-government co-ordination including government departments and arms-length bodies? (no more than 300 words)

As mentioned above, due to the status of NPSs for NSIPs, they must contain clearer and less conflicting policy and guidance (see our attached submission to the recent Energy NPS consultation).

8. Does the NSIP regime successfully interact with other consenting and regulatory processes and the wider context within which infrastructure projects operate? (no more than 300 words)

In short no. This is another area of huge frustration where licenses, consents or at times relevant planning permissions are being considered entirely separately to the Examination and often starting and finishing later too. Although Examiners helpfully try to at least bring the information involved into the Examination process often the information is not available and therefore whether, for example, the Environment Agency can grant an abstraction license is not known despite it being a key component of the DCO. There are always strong steers from the statutory agencies determining those separate but related applications that they are made along with all required information well in advance of the Examination starting but more often than not this is not the case.

For environmental impact assessment reasons alone decision makers must be able to have legal, financial and ecological certainty with regard to potential environment impacts and crucially the ability to mitigate or at times make ecological compensation. The Examiner's inability to have all relevant information before them is therefore a major flaw in the regime.

9. Are there areas where limits in the capacity or capability of NSIP applicants, interested parties and other participants are resulting in either delays or adversely affecting outcomes? (no more than 300 words)

Link members vary greatly in size and capacity. Even the larger and better-resourced charities struggle to fully engage, particularly with the increasing demands of an NSIP examination. The cost of staff, volunteer and financial resources is high. Our resources are limited and will never be comparable to those developers have at their disposal. If this is the case for national charities with in-house expertise, smaller charities and especially community groups (despite at times heroic efforts) are effectively excluded from much of the process. The government must follow the Aarhus Convention so the public can participate.

We welcome DLUHC willingness to engage in depth with the environment, charity and community sector in its review of the NSIPs regime and look forward to working closely with officials on this. Given the capacity challenges we have described above, our proposal is that DLUHC should commission some detailed research on the experiences of a wide variety of interest groups with the NSIP regime, not just those who might respond to an online survey. This could include using PINS data to assess the involvement

of interest groups in the formal NSIP process but also critically should seek to elicit the perspective of a variety of interest groups, not just the usual suspects. Link would also welcome being actively involved, for example as part of a steering group for any such study.

10. Is there anything else you think we should be investigating or considering as part of our end-to-end operational review of the NSIP process? (no more than 300 words)

It is essential that statutory consultees such as Natural England have the resources necessary to engage fully with the regime at the screening, scoping and pre-application stages, in order to provide a proper level of scrutiny. In recent years Natural England have been hard-pressed to provide detailed advice, even through their commercial pre-application – Discretionary Advice service, and this has led to gaps in statutory oversight. These reforms present the opportunity to address such capacity issues.

The regime would also benefit from better use of and access to comprehensive, up-to-date baseline environmental datasets. For example, the ancient woodland inventory produced by Natural England is currently incomplete. Although it is in the process of being reviewed, funding has not yet been made available for its full completion. It is important for this process to be completed quickly in order to allow future schemes to identify a full range of environmental assets at the earliest possible stage.

We strongly recommend that applicants should be required to provide all relevant baseline survey work in an appropriate form into a national data base to start filling the crucial data gaps for all habitats and species.

11. Please confirm how you interact with the NSIP regime?

Other: Environmental NGOs

Geographical scope: England

We hope that these comments are helpful and would be glad to discuss them further.