



# The Planning Inspectorate Yr Arolygiaeth Gynllunio

3D  
Temple Quay House  
2 The Square  
Bristol, BS1 6PN

Direct Line: 0303 444 5080  
Customer Services: 0303 444 5000  
e-mail: mark.southgate@pins.gsi.gov.uk

---

Mr Dylan Morgan  
(On behalf of People Against Wylfa B)

Your Ref:

**By email**

Our Ref: EN010007

Date: 24 October 2016

---

Dear Mr Morgan

## **Re Community outreach event, Llangefni, 4 October 2016**

Thank you for your letter of 12<sup>th</sup> October 2016 to Sarah Richards, Chief Executive, in which you provide feedback about the community outreach event held in Llangefni on 4<sup>th</sup> October 2016. In your letter you make a number of recommendations about the Nationally Significant Infrastructure Project (NSIP) planning process. As your letter relates to the NSIP process, and the Wylfa Newydd and North Wales Connector projects in particular, for which I am the responsible Director, Sarah has asked that I reply.

As a general point, many of the matters you raise relate to the processes and procedures set down in the Planning Act 2008 and related legislation and guidance. As explained at the outreach event, the role of the Inspectorate (PINS) is to impartially examine any application received in accordance with the law and relevant government policy that applies - PINS has no role in law or policy making. If you have concerns about legislation or policy you should direct these to your local Member of Parliament or directly to the relevant Secretary of State.

I note your list of issues (i) to (ix) that were raised by attendees at the outreach event. I will respond to your recommendations 1 to 6 in your letter, as these reflect the issues raised at the meeting.

### **1. "Restore the rights of ordinary citizens, as Interested Parties, to cross examine and/or speak at Hearings during the Examination Period, irrespective of written representations."**

The Planning Act 2008 sets down that the Examining Authority (either an individual Examining Inspector or a panel of Examining Inspectors) will decide how an application will be examined (s87) and how hearings are conducted (s94). The law is

clear that at hearings each interested party is entitled to make oral representations, subject to the Examining Authority's powers of control. The Planning Act 2008 indicates *inter alia* that it is for the Examining Authority to decide how a hearing is conducted, whether any person making representations can be questioned by another person, and that the ExA "*may refuse to allow representations to be made at the hearing if ... the representations; are irrelevant, vexatious or frivolous; relate to the merits of policy set out in a national policy statements; or repeat other representations already made (in any form by any person)...*".

It is at the discretion of the Examining Authority whether or not to allow cross examination at hearings. In practice, cross examination has rarely been used in the development consent examination process. Government guidance makes it clear that an Examining Authority should only allow cross examination where it is necessary to test complex evidence and that questioning should usually be from the Examining Authority (see paragraph 98 of DCLG Guidance - [Planning Act 2008: examination of applications for development consent](#) ). As explained at the outreach event, cross examination at planning inquiries is often daunting for members of the public and is not necessarily the most accessible or best way to put forward views and evidence about an application.

Given that development consent examinations are based on a primarily written, inquisitorial process, cross examination is rarely required. However, I can assure you that if an interested party would like the opportunity to cross examine another interested party then a reasoned request can be made to the Examining Authority. This is best done at the Preliminary Meeting or in advance of a hearing.

## **2. "Implement reasonable opportunity for direct feedback from all affected local communities, on developers' and local authority statements on community consultation, immediately upon receipt of DCO Applications by PINS, prior to determining Application Acceptance"**

The purpose of the acceptance stage is to check that the application meets the statutory requirements set down in the Planning Act 2008 in terms of its completeness and the quality of the submitted application documentation. [Section 55 of the Planning Act 2008](#) sets down the legal requirements, in terms of determining whether or not an application should be accepted for examination.

Part of the work carried out by the Inspectorate at the acceptance stage is to determine whether the pre-application consultation carried out by a developer has been carried out to the standard set out in the legislation. At the outreach event we explained about the statutory role that local authorities play in advising developers about how best to consult with communities, as part of the process for producing and publishing a Statement of Community Consultation (SoCC) under s47 of the Planning Act 2008.

Following the submission of the application to PINS, relevant local authorities have a

statutory role to provide their view on whether or not the consultation was carried out in accordance with the published SoCC, under s55(4).

I understand you would like a more direct role for individuals in providing feedback to the Secretary of State about whether or not an applicant has met its pre-application consultation commitments, as set down in the SoCC. We usually advise members of the public to firstly put their views to the developer and allow them an opportunity to respond. If that does not resolve their concerns then they should put their views to a relevant local authority so that they can consider them when preparing the local authority's adequacy of consultation representation.

Members of the public are welcome to send a copy of that correspondence to the Inspectorate, for our information. Please note we will not be able to enter into correspondence about the merits of the application, including the developer's consultation. However, at the pre-application stage we can raise any specific concerns directly with the developer.

With regard to the points you raise about the power of the Examining Authority to control the conduct of hearings, the purpose of the examination is for the Examining Authority to gather views and evidence from interested parties. In order to allow them to do this effectively they have powers to control the proceedings. Section 94(8) of the Planning Act 2008 is particularly relevant to the matters you raise. These powers are exercised responsibly by Examining Authorities and are intended to facilitate the information gathering process. The Examining Authority will be interested to hear evidence and views from a broad spectrum of interested parties who wish to speak at the hearings. In this context, however, it serves no purpose for the Examining Authority to hear the same points repeatedly. The Examining Authority will have the opportunity to read all the written representations that are put to them and which contain the views of all the interested parties. As stated at the outreach event, hearings are supplemental to the written representations that are received and should not be viewed as a substitute for them.

**3. "Commit immediately to proactively advancing and raising public awareness of the role of the Infrastructure PINS, the difference between the DCO process and the traditional planning application appeal procedures, and identifying constraints on what DCO Inspectors will consider as relevant representations by on Wylfa Newydd and the new National Grid Pylons Line on Anglesey."**

The outreach events held in Llangefni were intended to provide information about the Development Consent Order (DCO) process to the local community. In addition, we have a dedicated National infrastructure helpline 0303 444 5000 and email address [NIEnquiries@pins.gsi.gov.uk](mailto:NIEnquiries@pins.gsi.gov.uk) where people can find out more about the NSIP process. Developers undertaking their pre-application consultation can and often do refer members of the public to PINS for information or advice when they have questions about the role of PINS in the DCO process.

The National Infrastructure Planning website is a “one stop shop” and contains the relevant legislation, guidance and advice relevant to the DCO process. PINS also produce [Advice Notes](#) that provide more detailed, non statutory information about different aspects of the DCO process. Our Advice Note 8 series is aimed at the general public and it explains the remit of the Examining Authority’s examination, including the matters they should have regard to and those which the Examining Authority can disregard. Advice Note 8 is published in English and in Welsh <https://infrastructure.planninginspectorate.gov.uk/cy/>.

In respect of national policy, [Advice Note 8.3](#) states that, *“the Examining Authority may disregard representations which ... deal with the merits of matters of national policy, contained in National Policy Statements (NPSs). NPSs have already been the subject of consultation and parliamentary approval and it is not the role of the examination to debate the merits of national policy.”*

Section 104 of the Planning Act 2008 is clear that, *“the Secretary of State must decide the application in accordance with any relevant national policy statement”* unless specific exceptions apply, which are listed in the provisions of s104.

The points you list in your letter under 3(a) relate primarily to Nuclear Energy policy. As you are aware, the relevant NPS is EN6 which was published in July 2011 by the Department for Energy and Climate Change (now Department for Business, Energy and Industrial Strategy). This is among the relevant National Policy Statements that the Examining Authority and Secretary of State must determine any nuclear generating station NSIP application under. If you disagree with the Government’s policy on Nuclear Energy, as set down in EN6, then you should address those concerns to your MP or directly to the Secretary of State for Business, Energy and Industrial Strategy.

Paragraph 2.7 of EN6 states that the Examining Authority should avoid unnecessary duplication and ensure that planning and regulatory expertise are focussed on the most appropriate areas. In summary, the DCO process will not consider issues that are considered by the Office of Nuclear Regulation (ONR) through the Nuclear Site Licence process or the Environment Agency through the Environmental Permitting process such as, nuclear safety, security, protection of people and the transport of nuclear material.

- 4. “Require Horizon to provide separate justification statement, in the DCO Application, on risk to current and future generations from unforeseeable major nuclear accident involving either, or both, proposed large Advance Boiling Water Nuclear Reactors at Wylfa.**
- 5. Require Horizon to provide separate justification statement, in the DCO Application, on risk to future generations over hundreds of thousands of years into the future, should anything go wrong with the additional spent nuclear fuel radioactive waste that Horizon guarantees to create at Wylfa Newydd reactors.”**

As set out above in reply to Point 3, the applicant will need to make a separate application to the ONR for a Nuclear Site Licence, and also an Environmental Permit from the Environment Agency. These are separate application processes and there are public consultation processes in respect of each. The ONR website provides more information in this regard:

<http://www.onr.org.uk/>

The Environment Agency provides advice on permitting:

<https://www.gov.uk/topic/environmental-management/environmental-permits>

**6. "Freeze the processing of DCO Applications by the Infrastructure PINS, for Wylfa Newydd and the New Anglesey Pylons Line, pending express PINS enquiry with the Secretary of State as to the date of review of the National Policy Statement EN-6, followed by full PINS consultation with the public across North Wales on whether or not a DCO application should be determined for Acceptance."**

As explained at the outreach event, the review or replacement of National Policy Statements is at the discretion of the relevant Secretary of State. This is set out under section 6 of the Planning Act 2008. The application will be determined in accordance with the National Policy Statements that are in place at the time of the examination.

It is for an applicant to decide when to submit an application and the Inspectorate has no power to prevent a developer from making a DCO application. The purpose of the pre-application stage is for developers to try to resolve or mitigate the impacts and issues that arise as a result of their project. It is their risk if they fail to make the most of the pre-application stage, either in terms of getting their application accepted for examination, or the impact that it could have on subsequent examination of the application, if accepted, in the context of a statutory timetable.

I trust that you find the above explanations helpful.

Yours sincerely

*Mark Southgate*

Mark Southgate

**Director of Major Casework**

Advice may be given about applying for an order granting development consent or making representations about an application (or a proposed application). This communication does not however constitute legal advice upon which you can rely and you should obtain your own legal advice and professional advice as required.

A record of the advice which is provided will be recorded on the National Infrastructure Planning website together with the name of the person or organisation who asked for the advice. The privacy of any other personal information will be protected in accordance with our Information Charter which you should view before sending information to the Planning Inspectorate.