



The Planning Act 2008

Sizewell C (SZC)

Planning Inspectorate Reference EN010012

Deadline 7: 3 September 2021

Written Summary of Oral Case

ISH9 Policy and Need, 26 August 2021

Agenda Item	East Suffolk Council Submissions
<p>1. Introductions</p>	<p>Speakers on behalf of East Suffolk Council (ESC):</p> <p>Andrew Tait QC</p> <p>Angus Walker, Partner, BDB Pitmans</p>
<p>2. National policy and the assessment of the need for new nuclear power generation:</p> <p>(a) The National Policy Statements (NPSs) EN-1 and EN-6.</p>	<p>(a) The National Policy Statements (NPSs) EN-1 and EN-6.</p> <p>EN-1 and EN-6 do not have effect for the purposes of section 104, since EN-6 only applies to nuclear power stations that will be deployed by 2025 (paragraph 1.5.1) and EN-1 only applies to the projects to which EN-6 applies (paragraph 1.4.5). They are both, however, important and relevant for the purposes of deciding the application under section 105 of the Planning Act 2008. ESC understand that the publication of revised [draft] energy NPSs is expected in due course, and that the intention is for the revised NPSs to be designated by the end of 2021.</p>

<p>(b) The applicability of EN-1 and EN-6 in the light of the Written Ministerial Statement on Energy Infrastructure (ref. HLWS316) (2017 Ministerial Statement).</p> <p>(c) The implications of other relevant documents and publications issued since the submission of the application for the application of NPS policy including Energy White Paper, Updated Energy and Emissions Projections 2019 (October 2020), The Ten Point Plan for a Green Industrial Revolution (November 2020), National Infrastructure Strategy (November 2020), Response to the National Infrastructure Assessment (November 2020), The Sixth Carbon Budget: The UK's path to Net Zero (December 2020).</p> <p>(d) The scale and urgency of the need in the light of national energy policies overall.</p> <p>(e) The funding arrangements for the Project together with any associated consequences for the timing of the</p>	<p>(b) The applicability of EN-1 and EN-6 in the light of the Written Ministerial Statement (WMS) on Energy Infrastructure (ref. HLWS316) (2017 Ministerial Statement).</p> <p>The WMS confirmed that EN-6 does not have effect in relation to post-2025 nuclear power stations but will still be important and relevant to decisions on them until it is replaced by a new NPS, which remains the case and ESC would support this position. That would mean that (unless new NPSs are designated in time) the decision will be taken under s105 of the Planning Act 2008, and both NPSs would be important and relevant under section 105(2)(c). The government continues to give strong in principle support to the sites listed in the NPS (so including Sizewell).</p> <p>(c) The implications of other relevant documents and publications issued since the submission of the application for the application of NPS policy including Energy White Paper, Updated Energy and Emissions Projections 2019 (October 2020), The Ten Point Plan for a Green Industrial Revolution (November 2020), National Infrastructure Strategy (November 2020), Response to the National Infrastructure Assessment (November 2020), The Sixth Carbon Budget: The UK's path to Net Zero (December 2020).</p> <p>The documents identified by the ExA are plainly relevant to the ExA's consideration and that of the Secretary of State. However, they do not alter the policy contained in EN-1 or EN-6, and do not appear to be inconsistent with those policies. In particular, the Energy White Paper makes it clear that the policies contained in EN-1 and EN-6 remain government policy and provide a proper basis for decision-making.</p> <p>The Energy White Paper (p48) says the government will aim to bring at least one large-scale nuclear project to the point of Final Investment Decision by the end of this Parliament, subject to clear value for money and all relevant approvals. That would be by December 2024 if Parliament runs its full course.</p>
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<p>project, and hence its capability of meeting an urgent need for new generating capacity.</p>	<p>The updated energy and emissions projections should be considered in the light of EN-1 paragraph 3.3.18 which says in relation to earlier projections (but equally applicable to later ones) that they do not reflect a desired or preferred outcome for the Government in relation to the need for additional electricity generating capacity or the types of electricity generation required.</p>
	<p>(d) The scale and urgency of the need in the light of national energy policies overall. EN-1 states that new electricity generation plant, including new nuclear power, is urgently needed (para. 3.5.1) and the heading to para. 3.5.9 is the urgency of the need for new nuclear power. Para. 3.1.2 states that the Government does not consider it appropriate for planning policy to set targets or limits on different technologies.</p> <p>Substantial weight should be given to considerations of need under 3.2.3. That weight, in any given case, should be proportionate to the anticipated extent of the project's actual contribution to satisfying the need for this form of Infrastructure, i.e. nuclear. The project's capacity will be relevant to that exercise (in the context of the absence of any quantitative caps in the policy).</p>
	<p>(e) The funding arrangements for the Project together with any associated consequences for the timing of the project, and hence its capability of meeting an urgent need for new generating capacity.</p> <p>ESC has no comment on the funding arrangements for the Project.</p>

<p>3. The application of national policy and the correct approach to decision making:</p> <p>(a) The Drax High Court² (May 2020) and Court of Appeal³ (January 2021) judgements.</p> <p>(b) The Wylfa Newydd Nuclear Power Station Panel Recommendation Report (July 2019), and the approach taken by that ExA to the reference to “relevant change of circumstances” in the 2017 Ministerial Statement.</p> <p>(c) The implications of the above for the application of NPS policy and the appropriate process to accommodate changes of circumstance after the designation of an NPS.</p>	<p>(a) The Drax High Court² (May 2020) and Court of Appeal³ (January 2021) judgements.</p> <p>The Drax judgments arose in context of s104 of the Planning Act. Interpretation of EN-1 on need appears to us to be equally applicable to the status they have here as important and relevant considerations under s105.</p> <p>The Court of Appeal confirmed that in the context of EN-1, need is to be regarded as a given, described at paragraph 60 as “the first basic concept.” Paragraph 66 notes that substantial weight needs to be given to considerations of need. Paragraph 66 notes the decision maker can depart from that fundamental policy but clearly would need to give adequate reasons for doing so. The substantial weight to be given to considerations of need needs to be applied in the context of last sentence of 3.2.3.</p> <p>The final sentences of 3.2.3 are synthesised in paragraph 68 of the judgment and reconciled as follows: that 3.2.3 is based on the fundamental policy that substantial weight is to be given to the contribution made by projects to satisfying established need for energy infrastructure development of types covered by EN-1 which clearly encompasses nuclear power.</p> <p>That exercise as synthesised does not need to be carried out on a quantitative basis as there is no such requirement in the context of paragraph 60, which refers to 3.3.24 (no targets or limits in the policy; see also 3.1.2). The Court of Appeal’s judgment describes at paragraph 59 the absence of any quantitative definition of relative need as striking. In the light of that striking absence, it is difficult to make a quantitative assessment of that contribution.</p> <p>Furthermore, the Court of Appeal’s judgment at paragraph 105 makes it clear that the merits of policy as set out in the NPS are not to be challenged and are only to be encompassed in the context of a review under section 6, which is the requisite process.</p>
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	<p>It is no part of ESC’s case that substantial weight should not be attached to the capability of this project towards meeting that policy need.</p>
	<p>(b) The Wylfa Newydd Nuclear Power Station Panel Recommendation Report (July 2019), and the approach taken by that ExA to the reference to “relevant change of circumstances” in the 2017 Ministerial Statement.</p> <p>Paragraph 5.5.9 of the Recommendation Report on Wylfa Newydd sets out what that ExA considered would constitute a relevant change of circumstances as referred to in the WMS, namely policy, assessment criteria and the identification of the site in question.</p> <p>In applying the test that was adopted by the panel, ESC are not aware of any such relevant change of circumstances which would lead to less weight being given to the specific nuclear policies in EN-1 and EN-6.</p> <p>The Energy White Paper provides an up-to-date assessment of the relevance of those policies as of December 2020, so one would need to consider relevant change of circumstances since then.</p> <p>In any event, it brings one back to the section 6 point and the preclusive effect of that provision when looking at change of circumstances other than through the process identified in that section.</p>
	<p>(c) The implications of the above for the application of NPS policy and the appropriate process to accommodate changes of circumstance after the designation of an NPS.</p> <p>The implications of the above are that some energy policies have changed/evolved since the NPSs were designated and this should be taken into account; and new NPSs are likely to be designated before the decision is taken on this project. But the need for nuclear has not changed nor the</p>

	<p>criteria for assessing new nuclear. If the NPSs are issued in draft prior to the close of the Examination, interested parties ought to be invited to comment on the drafts. If not, then the Secretary of State ought to do the same, unless by the time of his consideration the NPSs have been designated in which case he should invite comments on the designated versions.</p>
<p>4. The contribution of the Sizewell C Project to meeting the need for new nuclear generating capacity:</p> <p>(a) The updated energy and emissions projections 2019 (BEIS) (October 2020).</p> <p>(b) The anticipated extent of the Project’s contribution to satisfying need for infrastructure of this type and the weight that should be given to that contribution.</p>	<p>(a) The updated energy and emissions projections 2019 (BEIS) (October 2020).</p> <p>The projections assume nuclear will provide about 80TWh by 2036 (p29). This has already factored in Wylfa Newydd not coming forward (p28 footnote) and presumably assumed Sizewell C will come forward. EN-1 paragraph 3.3.18 notes that such projections do not reflect a desired or preferred outcome.</p> <p>(b) The anticipated extent of the Project’s contribution to satisfying need for infrastructure of this type and the weight that should be given to that contribution.</p> <p>The Drax CA judgment cautions against requiring quantitative considerations of the level of meeting need (paragraph 67). Although this project would make a substantial contribution to meeting the need for infrastructure of this type (nuclear generation within low carbon generation), the NPS does not make a range of generation types obligatory.</p> <p>As to the extent, ESC considers it is best measured by its electricity generating capacity rather than any quantitative assessment. ESC would caution against use of such projections in the light of EN1-1 3.3.18. ESC therefore consider on this side of the equation that substantial weight should be attached to that contribution. Self-evidently that will need to be weighed against the other side of the equation, balanced against that, and the extent to which the project as a whole falls within EN-1 and EN-6 when considered against other considerations.</p>
<p>5. Local Plan and other policies:</p>	<p>(a) The relative weight to be afforded to Local Plan and NPS policies.</p>

<p>(a) The relative weight to be afforded to Local Plan and NPS policies.</p> <p>(b) Whether there is any conflict between Local Plan and NPS policies?</p> <p>(c) Other planning policy considerations – the revised National Planning Policy Framework (NPPF).</p>	<p>Section 105 obliges the Secretary of State to take any Local Impact Report into account, any prescribed matters and any other matters he considers important and relevant. Both the relevant NPSs and the Local Plan are considered to be important and relevant to the determination of this Application.</p> <p>In ESC’s response to ExA first written question G.1.16 we stated that</p> <p><i>“Policy SP13 referred to at paragraph 3.10.8 of the Planning Statement is from the now replaced Suffolk Coastal Local Plan 2013 and is not emerging policy [APP-590]. Policy SCLP3.4 relating to Proposals for Major Energy Infrastructure Proposals is now adopted policy and does set out matters against which the Council considers major infrastructure proposals should be considered. ESC agrees that these matters are included within the NPSs. Both the Local Plan and NPSs have a role in this process but ESC considers that the NPS, in particular EN-6, has been written solely for nuclear power station proposals whereas SCLP3.4 refers to all major energy infrastructure. ESC therefore agrees that one should look first to the NPSs which should prevail in the event of any conflict with the Local Plan.”</i></p> <p>We continue to be of the opinion that the NPSs should prevail in the event of any conflict with the Local Plan, albeit the Local Plan will remain an important and relevant consideration.</p>
	<p>(b) Whether there is any conflict between Local Plan and NPS policies?</p> <p>ESC does not consider there to be any conflict between Local Plan and NPS policies. In particular, ESC does not consider that there is any conflict between Local Plan policies SCLP3.4 and SCLP10.4 and the NPS. As set out in G.1.16 REP2-176, ESC accepts that should there be a conflict, then the nuclear specific policies in the NPS should prevail, albeit the Local Plan will remain an important and relevant consideration.</p> <p>Paragraph 4.1.5 of EN-1 deals with conflict between local plan and NPS and confirms the NPS prevails for the purposes of IPC decision-making given the national significance of the infrastructure, in cases of conflict between development plan documents and the NPS. 4.1.5 also confirms that the IPC may</p>

	<p>consider that the local development plan documents and local development framework may be important and relevant to its decision-making.</p>
	<p>(c) Other planning policy considerations – the revised National Planning Policy Framework (NPPF).</p> <p>Policies in the NPPF (July 2021) are explicitly stated not to apply to NSIPs (paragraph 5), but they could still be considered important and relevant under s105(2)(c) of the Planning Act 2008. While a thorough review has not been undertaken, the NPPF is unlikely to add significantly to the policies in the NPSs and the Local Plans. The same approach as explained under (a) above should be applied in the event of conflict.</p>
<p>6. Any other matters relevant to the agenda</p>	