

**The Sizewell C Project, Ref. EN010012**

**Issue Specific Hearing 9 (26 August 2021) –  
(ISH9) Policy and Need Submissions including  
written summary of Suffolk County Council’s  
Oral Case**

**Suffolk County Council Registration ID Number: 20026012**

**Deadline 7  
2021**

**3 September**

### Issue Specific Hearing 9 (26 August 2021) - (ISH9) Policy and Need

#### Post Hearing Submissions including written summary of Suffolk County Council's Oral Case

**Note:** These Post Hearing Submissions include a written summary of the Oral Case presented by Suffolk County Council (SCC). They also include SCC's submissions on all relevant Agenda Items, not all of which were rehearsed orally at the ISH due to the need to keep oral presentations succinct. The structure of the Submissions follows the order of the Agenda Items but within each Agenda Item, the Submissions begin by identifying the main points of concern to SCC and then turn to more detailed matters.

Examining Authority's Agenda Item / Question	Suffolk County Council's Response	References
<b>Agenda Item 1 – Welcome, introductions and arrangements for these Issue Specific Hearings</b>		
<b>Agenda Item 2 - National policy and the assessment of the need for new nuclear power generation:</b>		
<b>The National Policy Statements (NPSs) EN-1 and EN-6.</b>	<p>SCC recognises the need, urgency and timescale for deployment of nuclear power stations. However EN-6 concluded that, while the Sizewell site was potentially suitable, there were a number of areas that required further consideration by the IPC (SoS and ExA). At the time of ISH 9, SCC was not persuaded that the proposal in front of the examination met the necessary tests but is encouraged that many, though not all, outstanding issues are being resolved by continuing work with the Applicant on mitigation measures through the Deed of Obligation.</p> <p>EN-6 does make clear that the identification of a site as potentially suitable is not, of itself, the only consideration. "The fact that a site is identified as potentially suitable within this NPS does not prevent the impacts being considered greater than the benefits" (para 2.2.5). "The SSA could only conclude that sites are 'potentially' suitable as it is a strategic level assessment based on the information available to the Government at the time. The IPC will assess the details of each application for new nuclear development in accordance with EN-1, this</p>	<p>EN-6 Vol II – Annexes para C.8.126</p> <p>EN-6 Vol 1 paras 2.2.5, 2.3.1 (and footnote 18).</p>

	NPS and the Planning Act in order to determine whether or not to grant development consent at any of the listed sites” (footnote 18).	
<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).</b>	<p>SCC endorsed the remarks made by ESC that the present application falls to be considered under s.105 PA 2008 and not under s.104 PA 2008 because, having regard to the timescale of the expected deployment of the proposals, neither EN1 nor EN-6 ‘has effect’ in relation to the proposals. That proposition is not disputed by the applicant. SCC notes that s.105(1) PA 2008 provides that s.105 only applies where s.104 does not apply, so that the two provisions are mutually exclusive as a matter of law.</p> <p>The WMS confirms that the Government considers that EN-6 only ‘has effect’ for the purposes of s.104 for projects able to demonstrate expected deployment by the end of 2025. That cannot be achieved by the proposal (as the applicant accepts) and it therefore falls to be considered under s.105 PA 2008. Necessarily, if EN-6 does not ‘have effect’, nor can EN-1 ‘have effect’ (otherwise both s.104 and s.105 would apply to the same application, which as a matter of law they cannot). If there is seen to be any tension between EN-1 and EN-6 in this regard, it should be resolved in favour of EN-6, which is intended to be more specific than EN-1 in the context of new nuclear proposals (see para 1.1.1 and 1.4.1 of EN-1 for confirmation that EN-6 is technology-specific). When EN-1 and EN-2 are read ‘in combination’ and as a ‘suite’ of policy guidance (as advised by EN-1), it is clear that the more specific guidance on timescale for deployment in EN-6 should prevail as to whether either NPS ‘has effect’.</p> <p>It is also to be noted that the 2018 Government Response on Consultation on Siting Criteria and Process for the new NPS confirms (para 3.11) that decisions on proposals on sites listed in EN-6 but for deployment after 2025 will be made under s.105 PA 2008.</p> <p>SCC also referred to paras 1.1.2, 4.1.2, and 4.1.3 of EN-1 to make the point the presumption in favour in para 4.1.2 is limited by the provisions of the PA 2008. Whilst para 1.1.2 refers (indirectly) to s.104(3) to (8) PA</p>	<p>EN-1, paras 1.4.5, 3.3.16, 3.5.9, 3.5.10</p> <p>EN-6 Vol 1 paras 2.2.2, 2.3.1, 2.4.4</p> <p>EN-1, paras 1.1.2, 4.1.2, 4.1.3</p>

	<p>2008 rather than to s.105, and s.104(7) addresses cases where the adverse impacts of the proposed development would outweigh its benefits, the same point must apply with all the more force in a case falling under s.105 PA 2008 where there is no legal duty (as per s.104(3)) to determine an application in accordance with a NPS (unless an exception applies). Neither EN-1 nor EN-6 seek to answer whether in an individual case the adverse impacts do outweigh the benefits and that must be resolved on a case by case basis in the context of the particular proposal being considered. Para 4.1.3 of EN-1 is clear that the need to consider that balancing exercise applies to 'any proposed development'. It would not be right to apply any presumption in that exercise.</p> <p>SCC notes that the Planning Statement [APP-590] recognises (para 3.9.4) that the presumption in para 4.1.2 of EN-1 does not have effect in the case of a decision made under s.105 PA 2008. In such circumstances SCC does not see how the presumption can be treated as an important and relevant consideration or what role it could play in the decision. However, even if the presumption were to be brought into account, it could not carry any substantive weight in a case where it does not apply.</p>	
<p><b>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</b></p>	<p>With regard to the Energy White Paper's confirmation (at p.55) that the current suite of energy NPSs remained relevant policy, SCC made the point that the reference in the EWP that those policies 'have effect for the purposes of the Planning Act 2008' could not be taken as a statement that those policies 'have effect' for the purposes of s.104 PA 2008 in relation to a particular application, and could not provide a basis for contending that the present application fell to be considered under s.104 rather than under s.105. SCC does not understand the applicant to take any contrary view.</p>	

<b>to the National Infrastructure Assessment (November 2020), The Sixth Carbon Budget: The UK's path to Net Zero (December 2020).</b>		
<b>The scale and urgency of the need in the light of national energy policies overall.</b>	SCC reinforced the point made by ESC that the scale and urgency of the need did not override the requirement to balance that need against the adverse impacts when making a decision (or recommendation) on the application.	
<b>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.</b>		
<b>Agenda Item 3 – The application of national policy and the correct approach to decision making:</b>		
<b>The Drax High Court<sup>2</sup> (May 2020) and Court of Appeal<sup>3</sup> (January 2021) judgements.</b>	SCC supported the views expressed by ESC at the ISH on the legal implications of the Drax litigation and added that the litigation confirmed (see paras 130 and 131 of the High Court judgment), that EN-1 imposed no requirement for a quantitative assessment of need in the determination of an individual application (albeit it was open to a decision maker to consider quantitative matters, as noted by the Court of Appeal at para 67), that the Updated Energy and Emissions Projections (UEP) did not inform the policy approach of EN-1 and that must apply equally to any more recent projections (such as the 2019 UEP), and that in the context that there was no requirement for a quantitative assessment, and the UEPs were not targets or preferred outcomes (EN-1, paras 3.3.18, 3.3.24), there were difficulties in undertaking a meaningful quantitative assessment because there were no agreed benchmarks. Any such exercise was therefore, in SCC's view, of limited weight.	
<b>The Wylfa Newydd Nuclear Power Station Panel Recommendation Report</b>	SCC noted that the Wylfa Panel conclusion at para 5.5.9 that that there had been no relevant change of circumstance since the designation of EN-1 and EN-6 was probably an unnecessary conclusion, given the Drax	

<b>(July 2019), and the approach taken by that ExA to the reference to “relevant change of circumstances” in the 2017 Ministerial Statement.</b>	litigation and its conclusions (see para 108 of the High Court judgment) on the exclusive role of s.6 PA 2008 in determining whether a NPS has been overtaken by subsequent events or remained up to date (or not).	
<b>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.</b>		
<b>Agenda Item 4 – The contribution of the Sizewell C Project to meeting the need for new nuclear generating capacity:</b>		
<b>The updated energy and emissions projections 2019 (BEIS) (October 2020).</b>	SCC has already noted that the UEP do not inform the policy in EN-1 and EN-6, that there is no requirement for a quantitative assessment of need, and so updated UEP carry little weight in the evaluation of the proposal.	
<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.</b>	<p>SCC agreed with ESC that the appropriate measure of the project’s contribution was its electricity generating capacity rather than attempting a quantitative assessment relative to other potential sources of energy supply or projections of future national energy demand. SCC agreed with ESC that ‘substantial weight’ should be given to considerations of need (in line with para 3.2.3 of EN-1) but that is only the ‘starting point’ for an assessment of the weight to be given and is not fixed or to be considered regardless of the ‘actual contribution’ or the degree of weight that, as a matter of planning judgment is ‘proportionate’ (para 66 of the Court of Appeal judgment in Drax). SCC also agreed with ESC that the weight to be given to need had to be balanced against the weight to be given to any adverse effects.</p> <p>SCC also noted that whilst the EWP refers (p48) to a Government ‘aim to bring at least one further large-scale nuclear project to the point of FID by the end of this Parliament’, that aim is expressly made ‘subject to ... all relevant approvals’ and cannot therefore be relied on within such an</p>	

	<p>approval process (such as the DCO examination) as determining any particular outcome to that process.</p> <p>On the question of what weight would be ‘proportionate’ to the ‘actual contribution’ that the proposal will make to the need for additional sources of energy supply recognised by EN-1, SCC drew attention to the disproportionate relationship between the amount of energy generated by the proposal and the energy needs of the areas (SCC and ESC’s administrative areas) whose communities and environment would be subject to the adverse impacts of the proposal.</p> <p>Whilst that relationship can be measured in various ways, SCC put two bases forward to give an indication of the disproportionate nature of the relationship between where the benefits accrue and where the adverse impacts arise.</p> <p>First, looking at electrical power output, the proposals (both reactors) have a combined capacity to generate 3,340 MW (para 1.3.2 of the Planning Statement [APP-590]). By comparison, BEIS data for sub-national electricity consumption shows that Suffolk (as a whole, both domestic and non-domestic users across all districts) consumed 3,271.93 GWh in 2019, which equates to instantaneous demand of 373.51 MW (i.e. dividing the annual consumption by hours per annum (8,760)). For East Suffolk the equivalent figures are 1,067.44 GWh and 121.85 MW.</p> <p>In other words, Suffolk’s energy demand would account for about 11.18% of the energy capacity of the proposal and East Suffolk’s energy demand would account for about 3.65%. The vast bulk of the proposal’s energy capacity therefore serves to meet needs/demand in the rest of the UK.</p> <p>Whilst both EN-1 and the EWP note that electricity demand is forecast to grow significantly in future years, there is no indication that growth in Suffolk/East Suffolk will be at any greater rate than elsewhere, so the broad percentages would be similar even if total energy demand is greater in 2034. There is no mechanism whereby the power generated by</p>	<p>Electricity consumption figures are from <a href="#">BEIS Sub-national electricity consumption statistics 2019</a>. Sizewell C nameplate capacity from Planning Statement [APP-590].</p> <table><tr><th>Statistic</th><th>Figure</th></tr><tr><td>Sizewell C energy nameplate capacity</td><td>3,340 MW</td></tr><tr><td>Suffolk electricity consumption 2019</td><td>3,271.93 GWh</td></tr><tr><td>Suffolk p/h electricity demand 2019</td><td>373.51 MW</td></tr><tr><td>Suffolk p/h electricity demand as % of SZC nameplate capacity</td><td>11.18%</td></tr><tr><td>East Suffolk electricity consumption 2019</td><td>1,067.44 GWh</td></tr><tr><td>East Suffolk p/h electricity demand 2019</td><td>121.85 MW</td></tr><tr><td>East Suffolk p/h electricity demand as % of SZC nameplate capacity</td><td>3.65%</td></tr></table>	Statistic	Figure	Sizewell C energy nameplate capacity	3,340 MW	Suffolk electricity consumption 2019	3,271.93 GWh	Suffolk p/h electricity demand 2019	373.51 MW	Suffolk p/h electricity demand as % of SZC nameplate capacity	11.18%	East Suffolk electricity consumption 2019	1,067.44 GWh	East Suffolk p/h electricity demand 2019	121.85 MW	East Suffolk p/h electricity demand as % of SZC nameplate capacity	3.65%
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	<p>the proposal could or would be apportioned so as to prioritise meeting Suffolk’s energy needs.</p> <p>An alternative metric would be to look at the relationship between the 6 million homes that the applicant has stated could be powered by the proposals (see paras 1.3.2 and 7.2.13 of APP-590) and the number of homes in Suffolk and East Suffolk. A proxy for the number of homes is the MHCLG household projections, assuming one household equates to one home (disregarding empty/second homes). Using the Government preferred 2014-based household projections, there are 335,105 households/homes in Suffolk and 110,452 households/homes in East Suffolk (as at 2021). These figures rise to 365,464 and 119,446 respectively in 2034.</p> <p>In other words, homes in Suffolk would account for 5.58% of the power generated by the proposals (in 2021) or 6.09% (in 2034), and for homes in East Suffolk the figures are 1.84% (2021) and 1.99% (2034).</p> <p>Using either comparative measure, it is clear that there is a disproportionate relationship between the areas where the bulk of the benefits accrue (overwhelmingly outside of Suffolk) and the areas whose communities and environment experience the adverse impacts of the proposals. In simple terms, there is national gain but Suffolk’s pain.</p> <p>Whilst the applicant suggested that such a consequence was not unusual for a nationally significant infrastructure project, where impacts may be localised but benefits are spread more widely, the imbalance in this case is quite stark, with some 90% of the benefit going elsewhere.</p> <p>SCC suggests two consequences flow from this imbalance: (1) the weight that should be given to the ‘actual contribution’ to meeting needs should be tempered by the fact that so much of that contribution meets needs arising across the UK as a whole and is therefore a very diffuse benefit, and (2) if the proposal is to proceed, it is critical that the adverse impacts experienced by local communities and their environment within</p>	<p>Household projection figures are from <a href="#">MHCLG Live tables on household projections</a> as accessed 3 September 2021.</p> <table><tr><th>Statistic</th><th>Figure</th></tr><tr><td>Sizewell C homes powered claim</td><td>6,000,000 homes</td></tr><tr><td>Suffolk households at 2021</td><td>335,105 households</td></tr><tr><td>Suffolk households at 2021 as % of SZC homes powered claim</td><td>5.58%</td></tr><tr><td>Suffolk households at 2034</td><td>365,464 households</td></tr><tr><td>Suffolk households 2034 as % of SZC nameplate capacity</td><td>6.09%</td></tr><tr><td>East Suffolk households at 2021</td><td>110,452</td></tr><tr><td>East Suffolk households at 2021 as % of SZC homes powered claim</td><td>1.84%</td></tr></table>	Statistic	Figure	Sizewell C homes powered claim	6,000,000 homes	Suffolk households at 2021	335,105 households	Suffolk households at 2021 as % of SZC homes powered claim	5.58%	Suffolk households at 2034	365,464 households	Suffolk households 2034 as % of SZC nameplate capacity	6.09%	East Suffolk households at 2021	110,452	East Suffolk households at 2021 as % of SZC homes powered claim	1.84%
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	Suffolk (and East Suffolk) are adequately addressed to the greatest extent practical if they are to be outweighed in the overall balance. In this regard, SCC is encouraged by the positive progress that is being made to address these issues through the discussions on the Deed of Obligation.	East Suffolk households at 2034	119,446
		East Suffolk households at 2034 as % of SZC homes powered claim	1.99%
Agenda Item 5 – Local Plan and other policies:			
The relative weight to be afforded to Local Plan and NPS policies.	<p>SCC does not consider relevant local plan policies are in conflict with the NPS so the relative weight to be given to the policies is unlikely to be determinative of any issue. However, in the event of a conflict, it would be a matter of planning judgment as to which should carry the greater weight. SCC notes that it is common ground with the applicant that neither EN-1 nor EN-6 ‘have effect’ in relation to this proposal, albeit they are clearly relevant and important considerations in this case (as noted in the WMS).</p> <p>Whilst SCC recognises that para 4.1.5 of EN-1 states that in the event of a conflict between any other document and the NPS it is the NPS which prevails, that is a policy statement and not a statement of the legal position where s.105 PA 2008 applies. As such, it is for the decision maker to decide on the weight to be given to that policy statement relative to other considerations, and one factor relevant to that exercise will be the specific nature of the conflict between local and NPS policy. Another relevant factor will be the general point that local policies are to guide the determination of planning applications under the TCPA 1990 regime whereas NPS policies are to guide the determination of NSIPs under the PA 2008. However, that general point does not greatly assist in cases where the relevant NPS does not ‘have effect’. That appears to be the point being made by the Secretary of State in the Wheelabrator Kemsley decision (as referred to in ExQ2 G.2.14).</p> <p>SCC would add that the statement in para 4.1.5 of EN-1 is apparently unqualified but it clearly cannot be intended to apply in a s.105 case</p>		

	<p>where the Secretary of State does not think that any NPS (which by definition will not 'have effect') is an important and relevant consideration. It would be bizarre to have a policy requirement that an NPS which is found not to be important and relevant should prevail over any other document. Where, in a s.105 case, there are two documents that are important and relevant, one being a NPS and another being a document produced in a different manner (whether a local plan or another document, such as a White Paper or other Government policy document), there is no reason why the NPS should automatically prevail in the event of any conflict as a matter of planning judgment.</p> <p>Dealing with an abstract position rather than a specific conflict is perhaps not the most helpful way in which to engage with the issue but SCC would suggest that the more specific or the more targeted the local policy was the greater the weight it would carry and the more general or high-level the NPS policy was the less weight it would carry. SCC suspects that in many cases, with an actual example to consider, the question of conflict would fall away and it would be more likely that one policy document would address an issue that is not addressed by the other policy document or one policy document would address an issue in more detail than the other policy document. Such cases are not ones of policy conflict when properly analysed.</p>	
<b>Whether there is any conflict between Local Plan and NPS policies?</b>	<p>SCC's view (in common with ESC) is that there is no conflict between SCLP and NPS. SCC had understood that the applicant also shared this view, based on paras B.1.39 to B.1.41 of Appendix B to the Planning Statement Update [REP2-043], but noted that in oral remarks at the ISH the applicant (Mr Rhodes) appeared to indicate that the applicant had done some analysis which suggested that there were conflicts, and that position would be presented in the applicant's Post Hearing submissions. SCC reserves its position on that matter until it has seen and had an opportunity to consider the analysis referred to and expects to do so prior to Deadline 8.</p>	<p>Note: the version of SCLP Policy SCLP3.4 on p.27 of the LIR [REP1-045] is unfortunately not the up-to-date adopted version. The correct version appears at p.55 of LIR Appendix 1.2 [REP1-062].</p>
<b>Other planning policy considerations – the revised</b>	<p>Although the NPS and the NPPF are generally intended to be mutually exclusive in terms of the proposals that they are tackling (see para 5 of the NPPF (2021)), the recent revisions to the NPPF give a clear</p>	<p>NPPF (2021), paras 5, 126, 134.</p>

<b>National Planning Policy Framework (NPPF).</b>	<p>indication of the Government's <del>emerging</del> current views on a number of issues of relevance. SCC considers that where the NPPF sets out the most recent statement of Government policy on an issue also addressed by the NPS, the NPPF does not supplant or replace the NPS (because that is not its intended function) but it can indicate that the underlying issue addressed by the NPS Policy should attract more weight, than it may have done in the absence of that more recent statement.</p> <p>Among the key changes to the NPPF are updated policies aiming to improve the design of new developments, in response to the findings of the Government's Building Better, Building Beautiful Commission. This includes: introducing a new test that development should be well-designed (paragraph 1343). This says that "development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes". Clearly the local design policies would be difficult to apply to the main site but the theme of increasing importance of good design comes through strongly. Good design is already addressed in EN-1 (section 4.5) and EN-6 Vol 1 (section 2.8). The weight to be given to the objectives of ensuring that the applicant has produced a design that demonstrates good aesthetics as far as possible (EN-1, para 4.5.1) and is as attractive as it can be (EN-1, para 4.5.3) is increased by the heightened importance that the Government attaches to good design in the new NPPF. This increased weight is relevant to the question of whether pylons or gas insulated lines should be used for the power export connection.</p>	
<b>Agenda Item 6 – Any other matters relevant to the agenda</b>		