



CLEVE HILL SOLAR PARK

**WRITTEN REPRESENTATION BY CLEVE HILL SOLAR PARK LTD
NSIP POLICY AND PROCEDURE**

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1 INTRODUCTION AND SUMMARY

1. This document comprises a written representation by Cleve Hill Solar Park Ltd (“the Applicant”) in relation to the policies and procedures associated with the Development Consent Order (“DCO”) application process for Nationally Significant Infrastructure Projects (“NSIPs”) in support of its application for a DCO for the Cleve Hill Solar Park (“the Application”). This document has been prepared on behalf of the Applicant by Arcus Consultancy Service Ltd and includes legal submissions prepared by Pinsent Masons LLP.
2. This written representation is prepared in response to Swale Borough Council’s Local Impact Report ([REP1-005](#)) relating to the Planning Act 2008 process and the consideration and planning balance that applies in this process.
3. This written representation provides a single point of reference and brings together competent experienced professional submissions on the points, including referenced practice and precedent within the Planning Act 2008 regime. This representation is also submitted to ensure there is no misunderstanding of the Planning Act 2008 regime that provides the framework for examination, consideration, reporting, recommendation and determination. The aspects of the regime which are of particular significance to this Examination are the presumption in favour of Nationally Significant Infrastructure Projects and the hierarchy and weight of important and relevant matters.

2 PROCESS AND POLICY IN NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS

2.1 The NSIP Regime

4. The process introduced by the Planning Act 2008 (as amended), requires NSIPs, which are defined in the Act as infrastructure development which exceeds pre-determined thresholds, to be granted by the Secretary of State, to obtain a DCO in order to be consented and delivered. This is intended to be a streamlined planning process whereby applicants are not required to obtain separate planning permission, compulsory purchase orders and other consents which would normally be required for large-scale development¹.

2.2 Matters to be considered in decision-making

5. The matters which (the relevant Secretary of State) must have regard to in determining an application for a Development Consent Order are set out in Sections 104 and 105 of PA2008.
6. In cases where a National Policy Statement ("NPS") relating to the type of development proposed is in effect, the Secretary of State must have regard to any relevant NPSs, local impact reports, matters prescribed in relation to the type of development proposed and any other important and relevant matters (S104(2)).
7. For applications which relate to a type of development for which no NPS has effect, the matters which the Secretary of State must have regard to are local impact reports, matters prescribed in relation to the type of development proposed, and any other important and relevant matters (S105(2)).
8. A distinction can therefore be drawn between the process under the Act and decisions of local planning authorities under the Town and Country Planning Act 1990 on two main counts. First, the so-called presumption in favour of the development plan (Section 38(6) of the Planning and Compulsory Purchase Act 2004) and the potential for the absence of policy support to be a material consideration that weighs against a proposal (Section 70(2) of the Town and Country Planning Act 1990) do not apply to DCOs. Second, for NSIP applications, S105 clearly provides the ability for the Secretary of State to grant consent by giving him a wide ability to consider "relevant" matters where an NPS does not exist and does not provide for the absence of an NPS to count against an application.

2.3 The role of National Policy Statements

9. As set out above, S104 of the Act makes clear that where an NPS exists relating to the development type applied for, the Secretary of State must have regard to it. NPSs set out the national planning policy case and can establish the need for certain types of infrastructure, as well as identifying potential key issues that should be considered by the decision maker. Although for the Application there is currently no technology specific NPS which provides direct policy in relation to solar photovoltaic (PV) and energy storage development, in previous applications where no NPS applies, the Secretary of State has applied relevant related NPSs. The Planning Inspectorate has also confirmed this approach in pre-application advice to the Applicant.
10. As set out in Paragraph 59 of the Planning Statement [APP-254] which supports the Application, solar PV and energy storage technologies are not specific technologies that are directly addressed in any NPS. Therefore, although there are elements of NPS that

¹ House of Commons Library (2017) Planning for Nationally Significant Infrastructure Projects [online] Available at: <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06881> (Accessed 21/6/2019)

- are relevant to this project it does not fall to be determined under s104, therefore s105 applies.
11. The starting point is therefore that the project is above the threshold of 50 megawatts identified in S15(2) of the PA2008 and therefore, is by definition a project of national significance, to be determined under PA2008 and can be considered nationally significant energy generation and network infrastructure.
 12. Policies within NPSs EN-1 (Energy) and EN-5 (Electricity Networks), along with Paragraph 1.1.1. of NPS EN-3 (Renewable Energy Infrastructure) are important and relevant to this scheme. The NPS policies which are of particular relevance and importance to this examination are set out in the Planning Statement at Paragraphs 59-98 [APP-254].
 13. In other DCO applications for energy development determined pursuant to S105, the Examining Authorities (ExAs) have concluded that certain energy related NPSs were important and relevant matters and Secretaries of State have agreed with that approach in considering and granting the orders. The Applicant therefore considers there is direct precedent that the same approach should be taken to this application.
 14. The first example is the application for the Glyn Rhonwy Pumped Storage Generating Station Order 2017. The project is a pumped storage scheme, which is not subject to a technology specific NPS. However, the Recommendation Report² states that EN-1 is 'important and relevant' as these policies "are devised specifically for generating stations and energy infrastructure of this scale". Further, the ExA noted that the scheme would contribute to a consistent energy supply, the national need for which is emphasised in EN-1, notwithstanding the lack of a technology-specific NPS for pumped storage generating stations (see Paragraphs 3.3.11, 3.3.19, 3.3.20). The Secretary of State when determining the application adopted this tested and considered conclusion and approach, stating that the need for the project was demonstrated because EN-1 recognises the importance of storage in the UK's energy mix (see Paragraph 4.4, and also 4.2 and 4.5)³. In this way, we can see that whilst the NPS in question did not relate expressly to pumped storage, the ExA and Secretary of State started by looking at relevant national policy and applying it, as the scheme was in accordance with its aims and objectives and the identified national need.
 15. A similar approach was taken by the ExA for the DCO application Tidal Lagoon at Swansea Bay⁴, wherein energy related NPSs were considered important and relevant under S105 as the ExA noted that the policies in the NPSs are devised for large-scale generating stations and energy infrastructure (Paragraph 3.3.5). The Secretary of State concurred with this view, accepting the relevance of NPSs EN-1, EN-3 and EN-5 due to the lack of unacceptable adverse effects of the project, and the fact that granting consent would be

² The Planning Inspectorate (2016) Glyn Rhonwy Pumped Storage (Generating Station) Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Business, Energy and Industrial Strategy (File Ref: EN010072) [online] Available at:

<https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010072/EN010072-001396-Glyn%20Rhonwy%20Pumped%20Storage%20Recommendation%20Report.pdf> (Accessed 21/6/2019)

³ The Secretary of State for Business, Energy and Industrial Strategy (2016) Glyn Rhonwy Pumped Storage (Generating Station) The Secretary of State's Decision Letter (File Ref: EN010072) [online] Available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010072/EN010072-002284-Glyn%20Rhonwy%20Pumped%20Storage%20Generating%20Station%20Decision%20Letter%20of%20f%208%20Mar%202017.pdf>

⁴ The Planning Inspectorate (2015) Tidal Lagoon (Swansea Bay) Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Energy and Climate Change (File ref: EN010049) [online] Available at: [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010049/EN010049-003137-Tidal%20Lagoon%20\(Swansea%20Bay\)%20%20Recommendation%20Report.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010049/EN010049-003137-Tidal%20Lagoon%20(Swansea%20Bay)%20%20Recommendation%20Report.pdf) (Accessed 21/6/2019)

consistent with the relevant NPSs, which set out a generic national need for nationally significant energy generation and network infrastructure⁵ (Paragraph 11).

16. Another application of relevance is that for the Triton Knoll Electrical System Order 2016. As for the other applications noted above, this was an energy related development, for the underground grid connection cable for the consented Triton Knoll Offshore Wind Farm, without a relevant NPS. Whilst EN-5 relates to Electricity Networks Infrastructure, it is expressly limited to overhead lines, not underground cables as sought in that application, which the NPS notes would only fall under PA2008 if it is associated development. In its report, however, the ExA outlined that it would apply energy NPSs, as it was “akin to such associated development” which would be part of other developments, and therefore stated that “the relevant energy NPSs are therefore important and relevant matters to be taken into account in accordance with s105(2)(c)”⁶ (see Paragraph 3.3.3)⁷. The Secretary of State drew the same analogy in his decision letter and applied the same NPSs in making a determination (see Paragraph 4.6).
17. The Applicant is aware of ten other DCOs granted under S105, which are listed in the table below, along with a reference for where the relevant policy considerations are set out in the Secretary of State decision letters and ExA reports. These applications were granted prior to the adoption of an NPS in the specific area and demonstrate the considerations that the Secretary of State has had as important and relevant matters under S105(2)(c).

Project	Decision Letter	Examining Authority Report
North Doncaster Rail Chord (near Shaftholme)	<i>Para 26: '[The SoS] confirms that, in reaching this decision, he has had regard to the local impact report submitted by DBMC and to all other matters which he considers important and relevant to his decision as required by section 105 of the 2008 Act (decisions in cases where no National Policy Statement has effect).'</i>	Paragraph 19 of the report sets out the position under s.105, and the relevant considerations for the Secretary of State. Section 4 then sets out the principal issues identified and the LIR.
Ipswich Rail Chord	<i>At para 34, the letter states that '[The SoS] confirms that, in reaching this decision, he has had regard to the local impact report submitted by the relevant local authorities and to all other matters which he considers important and relevant to his decision as required by section 105 of the 2008 Act'.</i>	Section 3 of the report sets out the approach adopted under s.105. Section 4 (findings and conclusions) and particularly 4.2 – 4.46 the 'important and relevant' matters that the examining authority took into account.

⁵ The Secretary of State for Energy and Climate Change (2015) Tidal Lagoon (Swansea Bay) Secretary of State's Decision Letter (File ref: EN010049) [online] Available at: [https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010049/EN010049-003139-Tidal%20Lagoon%20\(Swansea%20Bay\)%20decision%20letter.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010049/EN010049-003139-Tidal%20Lagoon%20(Swansea%20Bay)%20decision%20letter.pdf)

⁶ The Planning Inspectorate (2016) Triton Knoll Electrical System Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Energy and Climate Change (File Ref: EN090019) [online] Available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN020019/EN020019-004772-Examining%20Authority%20Recommendation%20Report.pdf>

⁷ The Secretary of State for Energy and Climate Change (2016) Triton Knoll Electrical System Secretary of State's Decision Letter (File ref: EN090019) [online] Available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN020019/EN020019-004772-Secretary%20of%20State's%20Decision%20Letter%20which%20includes%20the%20Statement%20of%20Reasons>

Project	Decision Letter	Examining Authority Report
		<p>4.3: <i>'The local impact report and all matters which the Examining authority, on behalf of the Secretary of State, thinks are both important and relevant were examined through the written evidence and hearings held.'</i></p>
Heysham to M6 Link Road	<p>Paragraph 42 of the letter states:</p> <p><i>'[The SoS] confirms that, in reaching this decision, he has had regard to the local impact report submitted by Lancaster City Council and to all other matters which he considers important and relevant to his decision as required by section 105 of the 2008 Act (decisions in cases where no National Policy Statement has effect).'</i></p>	<p>In the absence of an NPS on National Networks, the report states that the NPS on ports was considered as the relevant background in which to consider the application (see section 3.2) given that the positioning of the road was relevant to the flow of goods and people in and out of the port of Heysham.</p> <p>The report also considers the NPS for Nuclear Power Generation and Government Transport Policy, among other sources listed in section 3 of the report. Section 3.10 sets out the conclusions from considering these policy documents and whether they support the proposed development.</p>
Morpeth Northern Bypass	<p>At para 15 of the letter:</p> <p><i>'The Secretary of State confirms that in reaching a decision on this application he has had regard, as required by section 105 of the 2008 Act, to the Local Impact Reports ("LIR") submitted by Northumberland County Council as planning authority ("NCC"), as summarised at ER 4.33-39.'</i></p>	<p>When scheme was in examination, the NNNPS was in draft form:</p> <p><i>'Hence, this report is written to address the tests in s105 but the draft NNNPS is an important and relevant matter to which significant weight has been attached.'</i> (para 3.2)</p> <p>The report states at paragraph 8.1 that: <i>'[the examiners] have had regard to the matters listed in section 105 of the Planning Act 2008 as amended, including the local impact report submitted by NCC'</i></p>
Norwich Northern Distributor	<p>The letter states that the application was decided under s.104, as in the time after the examination closed, the SoS designated the NNNPS. (14/01/2015).</p> <p>Therefore the SoS had to take the NNNPS into account in deciding the application in addition to the matters referred to at 3.4 of the examiners' report.</p>	<p>At paragraph 3.3 the report states:</p> <p><i>'Nevertheless, as the NNNPS did not have effect before the examination closed, we have to report to the Secretary of State on the basis that s105 of the PA2008 was operative.'</i></p> <p>At 4.494, the report states that: <i>'[the examiners], as required under s105</i></p>

Project	Decision Letter	Examining Authority Report
		<i>of PA2008, paid particular attention to the LIRs submitted by the local authorities in the locality.'</i>
A556 Knutsford to Bowden Scheme	<p>At paragraph 8, the letter states that the application has been decided under s.105, and that the other policies and legislation referred to at paragraphs 4.1-52 of the examiners' report '<i>are relevant and important matters to be taken into account in deciding this application.</i>'</p> <p>The provisions draft NNNPS was also considered 'important and relevant'</p>	<p>Between paragraphs 4.1 and 4.52 the report outlines the policies considered 'relevant and important' under s.105. These include:</p> <ul style="list-style-type: none"> • The Cheshire East Council Local Impact Report; • Various EU Directives; • Natural Environment and Rural Communities Act 2006; • United Nations Environment Programme Convention on Biological Diversity 1992; and • Macclesfield Borough Local Plan 2004
M1 Junction 10a Grade Separation	<p>At paragraph 27, the letter states that:</p> <p><i>The Secretary of State confirms that, in reaching this decision, he has had regard to the local impact report prepared jointly by LBC and Central Bedfordshire Council, any matters prescribed by Regulations under the 2008 Act that are relevant to the proposed development, and any other matters which he considers important and relevant to his decision, as required by section 105 of the 2008 Act.'</i></p>	<p>Section 3 of the report sets out the policies that the ExA had regard to in the report.</p>
Woodside Connection Houghton Regis Bedfordshire	<p>At para 8, the letter states that the application has been decided under s.105, and that the draft NNNPS has been taken into account alongside other relevant and important matters.</p>	<p>Section 3 of the report sets out the policies that the ExA had regard to in the report.</p>
Daventry International Rail Freight Terminal	<p>Paragraph 8 of the letter states that:</p> <p><i>The Secretary of State agrees with the Examining Authority that, since no NPS has yet been designated for strategic rail freight interchanges ("SRFIs"), he is required to decide this application in accordance with section 105 of the 2008 Act...For the purposes of section 105, he agrees with the Examining Authority's assessment, at ER 3.2-20, of the legislation and policy that are relevant and important matters to be taken into account in deciding this application.</i></p>	<p>Section 3 of the report sets out the policies that the ExA had regard to in the report. (from 3.7 down)</p>

Project	Decision Letter	Examining Authority Report
	Para 9 then lists the other matters taken into account under s.105.	

18. In light of the treatment of relevant NPSs in the consideration of previous DCO applications, the urgent national need for energy generating stations set out in both EN-1 and EN-3 is a matter that is both 'important and relevant' to the determination of this Application.
19. NPS EN-1 (Energy)⁸ states at Paragraph 5.1.2 that where technology-specific NPSs do not state that certain impacts should be given a particular weight, the level of weight to be given to such impact set out in NPS EN-1 should be followed. Therefore, in the absence of specific consideration of solar and energy storage in NPS EN-1 or technology-specific NPSs for solar energy and/or battery storage, the level of weight given to the potential impacts of this application should be determined in accordance with the policies in NPS EN-1 along with other relevant matters. The test therefore becomes whether the need for the development at the national level is outweighed by other material considerations.

2.4 The role of Local Impact Reports

20. To ensure that local issues are considered in the determination of NSIP applications, under S60 of PA2008, relevant local authorities must have the opportunity to submit Local Impact Reports ("LIRs") to set out the likely impacts of the proposed development on the authority's area. The Secretary of State must have regard to submitted LIRs in their consideration of DCO applications under S104(2)(b) and S105(2)(a) of the Act.
21. LIRs are usually technical documents which incorporate evidence-based assessments of potential impacts without indicating whether or not the local authority supports the application. This can be seen from The Planning Inspectorate Advice Note Two⁹, which advises that the main purpose of an LIR is 'to make the examining authority aware of the potential impacts of the project with the benefit of local knowledge' (Paragraph 21.5).
22. A key component of an LIR is the local authority's assessment of the relevant local planning policy considerations and appraisal of the proposed development's consistency or potential conflict with local policy and guidance¹⁰.

2.5 The role of National and Local Policy

23. PA2008 does not specifically require the Secretary of State to have regard to national or local planning policy or guidance in addition to the identified NPS policies. In many cases, other national and local policies and guidance documents have been considered to be important and relevant matters taken into account in the consideration of DCO applications. However, it is entirely within the Secretary of State's discretion to determine which policies are to be taken into account, depending on their relevance and importance

⁸ Department of Energy and Climate Change (2011) Overarching National Policy Statement for Energy (EN-1) [online] Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/47854/1938-overarching-nps-for-energy-en1.pdf (Accessed 21/06/2019)

⁹ The Planning inspectorate (2015) Advice Note Two: The role of local authorities in the development consent process [online] Available at: https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2015/03/Advice_note_2.pdf (Accessed 21/6/2019)

¹⁰ The Planning inspectorate (2012) Advice Note One: Local Impact Reports [online] Available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/2013/04/Advice-note-1v2.pdf> (Accessed 21/6/2019)

- to the development for which a DCO is sought. Furthermore, there is no legislation or policy which suggests that where there is no technology specific NPS, local or national policy should be afforded more weight than any other matter which is important and relevant.
24. Local authorities would generally set out their view on conformity of an application with relevant local planning policy and guidance in their Local Impact Reports, which means that consideration by the ExA is often given to local development plan policy through their consideration and regard to the Local Impact Report. For example, in considering the Triton Knoll Electrical System¹¹ the ExA had regard for the Local Plan policies put forward by the local authorities in their LIRs insofar as they were relevant (Paragraph 5.1.9). However, not all of the policies referred to in the LIRs were considered relevant to the application (Paragraph 5.5.13).
 25. On the other hand, the ExA for the Norwich Northern Distributor Road¹² considered the Local Development Plan to be a particularly important and a relevant matter in terms of establishing the need for the proposal for road development to alleviate local congestion which is referred to explicitly in the Development Plan (Paragraphs 3.30, 3.52).
 26. The weight afforded to national planning policy or other national Government policy such as the National Infrastructure Commission may be increased in applications for which there is no directly related NPS. In considering the proposal for a Tidal Lagoon at Swansea Bay¹³, the ExA states that Planning Policy Wales is an important and relevant matter as there is no designated NPS (Paragraph 3.3.2). Less importance is given to national policies in the Recommendation Report for the A556 (Knutsford to Bowdon Improvement)¹⁴, which explains that the NPPF is relevant and important in the absence of a designated National Networks NPS but that its weight is 'limited by caveats within it explaining the limited extent to which it applies to national infrastructure projects' (Paragraph 4.8).
 27. As evidenced by the preceding examples, there is a hierarchical approach to policy consideration for an NSIP project and the starting point for determination is to consider NPSs and their relevance. The approach and weight given to other national and local policy varies significantly between DCO applications and is at the discretion of the ExA. The weight afforded will depend on how up to date the Government or local policy is, the status of national and local planning documents and the relevance of each policy to the application.

¹¹ The Planning Inspectorate (2016) Triton Knoll Electrical System Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Energy and Climate Change (File ref: EN090019) [online] Available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN020019/EN020019-004772-Examining%20Authority%20Recommendation%20Report.pdf> (Accessed 21/6/2019)

¹² The Planning Inspectorate (2014) The Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T)) Order Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport (File ref: TR010015) [online] Available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR010015/TR010015-002708-Examining%20Authority%20Recommendation%20Report.pdf> (Accessed 21/6/2019)

¹³ The Planning Inspectorate (2015) Tidal Lagoon (Swansea Bay) Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Energy and Climate Change (File ref: EN010049) [online] Available at: [https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010049/EN010049-003137-Tidal%20Lagoon%20\(Swansea%20Bay\)%20%20Recommendation%20Report.pdf](https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/EN010049/EN010049-003137-Tidal%20Lagoon%20(Swansea%20Bay)%20%20Recommendation%20Report.pdf) (Accessed 21/6/2019)

¹⁴ The Planning Inspectorate (2014) The A556 (Knutsford to Bowdon Improvement) Development Consent Order Examining Authority's Report of Findings and Conclusions and Recommendation to the Secretary of State for Transport (File Ref: TR010002) [online] Available at: <https://infrastructure.planninginspectorate.gov.uk/wp-content/uploads/projects/TR010002/TR010002-000065-Examining%20Authority's%20report%20to%20the%20Secretary%20of%20State.pdf> (Accessed 21/6/2019)



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