

Application by National Grid Electricity Transmission Plc for an Order granting Development Consent for the Richborough Connection Project

Planning Inspectorate Reference No: EN020017

Representation No. 14

Issue Specific Hearing on the effect of the Richborough Connection Project on the Broad Oak Reservoir Proposal

Agenda Item 3, Policy Context – Note setting out South East Water's View

Understanding the relationship between the Water Industry Act 1991 and the Planning Act 2008

The Planning Act 2008

1. The Planning Act 2008 sets the statutory framework for decision making in this case with NPS EN-1 and EN-5 providing the relevant policy for the purposes of section 104(7) so far as the relationship between the PA 2008 and the Water Industry Act 1991 (**WIA 1991**) is concerned. The issue is not a matter of hierarchy of legislation but rather how, in making a decision under the PA 2008, account should be taken of proposals in the Water Resources Management Plan produced under the WIA 1991. The PA 2008 only deals directly with the process for approving water infrastructure where such development exceeds the relevant thresholds for Nationally Significant Infrastructure Projects (**NSIPs**). The Reservoir does not exceed those thresholds, and is not an NSIP.
2. Proposals contained in WRMPs promoted under the WIA 1991 can however be relevant to the determination of applications made under the PA 2008 in a number of potential ways:
 - a. because the existence of such proposals engage provisions in a relevant NPS (as here) (s. 104(3)); and/or
 - b. because consideration of their terms identifies relevant benefits or adverse effects and helps to inform judgments as to their significance (as here) (s. 104(7)); and/or
 - c. because their contents are judged on the facts to be important and relevant to the Secretary of State's decision (s. 104(2)).
3. In that sense their status for the purposes of the PA 2008 is not materially different to local planning authority development plans.

The Water Industry Act 1991

Purpose and scope of the WRMP

4. In order to understand the status and importance of the WRMP in this context, we have set out below a brief overview of the statutory context of their preparation and use.
5. S. 37 of the WIA 1991 imposes a statutory duty on water undertakers to develop and maintain an efficient and economical system of water supply within its area and to ensure that all such arrangements have been made for supplying water to premises in its area and persons who demand them. That duty is enforceable by the Secretary of State.
6. That then leads to a specific duty under s. 37A to prepare, publish and maintain a WRMP (ss. (1)).
7. The WRMP is a plan for how the water undertaker will manage and develop water resources so as to meet its statutory obligations under the WIA 1991 (ss. (2)).

8. The WRMP must address in particular not only the measures it will take to meet its statutory obligations, but also "the likely sequence and timing for implementing those measures" (ss. (3)(c)).
9. There is a duty to review the WRMP annually, and where necessary to update it (ss. (5)-(6)).

Preparation and publication of the WRMP

10. Before preparing its WRMP (including a revised WRMP), the undertaker must consult a number of key stakeholders, including the Environment Agency (**EA**) and Secretary of State (s. 37A(8)).
11. The procedure for preparing, publishing and approving a WRMP is set down in s. 37B and in the Water Resources Management Plan Regulations 2007 (**2007 Regulations**).
12. The draft WRMP is sent to the Secretary of State (ss. (1)) and published so as to bring it to the attention of those likely to be affected by it (ss. (3)).
13. The Secretary of State sends to the undertaker copies of any representations received and gives the undertaker an opportunity to comment upon them (ss. (4)).
14. Pursuant to ss. (5) the Secretary of State may make regulations prescribing how such representations and any comments from the water undertaker are to be dealt with.
15. The Secretary of State has made the 2007 Regulations pursuant to s. 37B.
 - a. Regulation 2(2) provides a list of the persons to whom the undertaker shall send a copy of the draft WRMP and accompanying statement for the purposes of s. 37B(3).
 - b. Regulation 4 provides for the preparation of a statement by the undertaker responding to representations received by the Secretary of State, which is then sent to the Secretary of State and all those who made representations, and published in the way mandated.
 - c. Regulation 5 gives the Secretary of State the power to cause a public inquiry to be held in connection with the draft WRMP.
16. The Secretary of State has the power to direct that changes be made to the draft WRMP (s. 37B(7)).

Strategic Environmental Assessment

17. WRMPs are subject to the requirements of the Environmental Assessment of Plans and Programmes Regulations 2004 (**SEA Regulations**) (SEW WR paragraph 20), reflecting the fact that they form an important part of the framework for consenting future development projects which could have significant effects on the environment.

The Water Resources Act 1991

18. As a convenient summary, we set out where in SEW's Written Representation we address the relevant policy context.

Policy Framework set out in EN-1 and EN-5

19. SEW's WR deals with the NPS policy framework at paragraphs 144-197.
20. It is important to have regard to what is said in NPS EN-5 at paragraphs 2.8.4 and 2.8.7-2.8.9 which make consideration of underground lines as an alternative material in the circumstances described.

NPS EN-1

21. SEW WR paragraphs 144-185
- a. Approach to mitigation, design and EIA (SEW WR paragraphs 144-154)
 - b. Biodiversity (SEW WR paragraphs 155-160)
 - c. Land Use (SEW WR paragraphs 161-164)
 - d. Water Quality and Resources (SEW WR paragraphs 165-169)
 - e. Alternatives (SEW WR paragraphs 170-185, and see paragraphs 192-197 on EN-5 and undergrounding as an alternative).

NPS EN-5

22. SEW WR paragraphs 186-197
- a. Risk of refusal because of poor site selection paragraph 186
 - b. Bird collision paragraphs 187-190
 - c. Holford Rules paragraphs 191-197