

Overarching National Policy Statement for Energy (EN-1)

Department of Energy and Climate Change

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**Presented to Parliament pursuant to Section 5(9)
of the Planning Act 2008**

Part 1 Introduction

1.1 Background

1.1.1 This National Policy Statement (NPS) sets out national policy for the energy infrastructure defined in Section 1.3 below. It has effect, in combination with the relevant technology-specific NPS (see paragraph 1.4.1), on the decisions by the Infrastructure Planning Commission (IPC) on applications for energy developments that fall within the scope of the NPSs. For such applications this NPS, when combined with the relevant technology-specific energy NPS, provides the primary basis for decisions by the IPC. Under the Planning Act 2008¹ the IPC must also have regard to any local impact report submitted by a relevant local authority, any relevant matters prescribed in regulations, the Marine Policy Statement (MPS) and any applicable Marine Plan, and any other matters which the IPC thinks are both important and relevant to its decision.

1.1.2 The Planning Act 2008 also requires that the IPC must decide an application for energy infrastructure in accordance with the relevant NPSs except to the extent it is satisfied that to do so would:

- lead to the UK being in breach of its international obligations;
- be in breach of any statutory duty that applies to the IPC;
- be unlawful;
- result in adverse impacts from the development outweighing the benefits;
or
- be contrary to regulations about how its decisions are to be taken.

1.1.3 Applicants should therefore ensure that their applications, and any accompanying supporting documents, are consistent with the instructions and guidance in this NPS, the relevant technology-specific NPS and any other NPSs that are relevant to the application in question.

1.2 Role of this NPS in the planning system

1.2.1 This NPS, and in particular the policy and guidance on generic impacts in Part 5, may be helpful to local planning authorities (LPAs) in preparing their local impact reports. In England and Wales this NPS is likely to be a material consideration in decision making on applications that fall under the Town and Country Planning Act 1990 (as amended). Whether, and to what extent, this NPS is a material consideration will be judged on a case by case basis.

1.2.2 Under the Marine and Coastal Access Act 2009, the Marine Management Organisation (MMO), will determine applications under s.36 and s.36A of the

¹ Section 104(2) Planning Act 2008.

Part 4 Assessment Principles

4.1 General points

- 4.1.1 The statutory framework for deciding applications for development consent under the Planning Act is summarised in Section 1.1 of this NPS. This Part of the NPS sets out certain general policies in accordance with which applications relating to energy infrastructure are to be decided that do not relate only to the need for new energy infrastructure (covered in Part 3) or to particular physical impacts of its construction or operation (covered in Part 5 and the technology-specific NPSs).
- 4.1.2 Given the level and urgency of need for infrastructure of the types covered by the energy NPSs set out in Part 3 of this NPS, the IPC should start with a presumption in favour of granting consent to applications for energy NSIPs. That presumption applies unless any more specific and relevant policies set out in the relevant NPSs clearly indicate that consent should be refused. The presumption is also subject to the provisions of the Planning Act 2008 referred to at paragraph 1.1.2 of this NPS.
- 4.1.3 In considering any proposed development, and in particular when weighing its adverse impacts against its benefits, the IPC should take into account:
- its potential benefits including its contribution to meeting the need for energy infrastructure, job creation and any long-term or wider benefits; and
 - its potential adverse impacts, including any long-term and cumulative adverse impacts, as well as any measures to avoid, reduce or compensate for any adverse impacts.
- 4.1.4 In this context, the IPC should take into account environmental, social and economic benefits and adverse impacts, at national, regional and local levels. These may be identified in this NPS, the relevant technology-specific NPS, in the application or elsewhere (including in local impact reports).
- 4.1.5 The policy set out in this NPS and the technology-specific energy NPSs is, for the most part, intended to make existing policy and practice of the Secretary of State in consenting nationally significant energy infrastructure clearer and more transparent, rather than to change the underlying policies against which applications are assessed (or therefore the “benchmark” for what is, or is not, an acceptable nationally significant energy development). Other matters that the IPC may consider both important and relevant to its decision-making may include Development Plan Documents or other documents in the Local Development Framework. In the event of a conflict between these or any other documents and an NPS, the NPS prevails for purposes of IPC decision making given the national significance of the infrastructure. The energy NPSs have taken account of relevant Planning Policy Statements (PPSs) and older-style Planning Policy Guidance Notes

- 4.2.11 In this NPS and the technology-specific NPSs, the terms 'effects', 'impacts' or 'benefits' should be understood to mean likely significant effects, impacts or benefits.

4.3 Habitats and Species Regulations

- 4.3.1 Prior to granting a development consent order, the IPC must, under the Habitats and Species Regulations⁷⁹, (which implement the relevant parts of the Habitats Directive and the Birds Directive⁸⁰ in England and Wales) consider whether the project may have a significant effect on a European site, or on any site to which the same protection is applied as a matter of policy, either alone or in combination with other plans or projects. Further information on the requirements of the Habitats and Species Regulations can be found in a Government Circular⁸¹. Applicants should also refer to Section 5.3 of this NPS on biodiversity and geological conservation. The applicant should seek the advice of Natural England and/or the Countryside Council for Wales, and provide the IPC with such information as it may reasonably require to determine whether an Appropriate Assessment is required. In the event that an Appropriate Assessment is required, the applicant must provide the IPC with such information as may reasonably be required to enable it to conduct the Appropriate Assessment. This should include information on any mitigation measures that are proposed to minimise or avoid likely effects.

4.4 Alternatives

- 4.4.1 As in any planning case, the relevance or otherwise to the decision-making process of the existence (or alleged existence) of alternatives to the proposed development is in the first instance a matter of law, detailed guidance on which falls outside the scope of this NPS. From a policy perspective this NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option.
- 4.4.2 However:
- applicants are obliged to include in their ES, as a matter of fact, information about the main alternatives they have studied. This should include an indication of the main reasons for the applicant's choice, taking into account the environmental, social and economic effects and including, where relevant, technical and commercial feasibility;
 - in some circumstances there are specific legislative requirements, notably under the Habitats Directive, for the IPC to consider alternatives. These should also be identified in the ES by the applicant; and

79 The Conservation of Habitats and Species Regulations 2010 (SI2010/490).

80 Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora; Council Directive 2009/147/EC on the conservation of wild birds.

81 Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System (ODPM 06/2005, Defra 01/2005) available via TSO website www.tso.co.uk/bookshop. It should be noted that this document does not cover more recent legislative requirements. Where this circular has been superseded, reference should be made to the latest successor document.

- in some circumstances, the relevant energy NPSs may impose a policy requirement to consider alternatives (as this NPS does in Sections 5.3, 5.7 and 5.9).

4.4.3

Where there is a policy or legal requirement to consider alternatives the applicant should describe the alternatives considered in compliance with these requirements. Given the level and urgency of need for new energy infrastructure, the IPC should, subject to any relevant legal requirements (e.g. under the Habitats Directive) which indicate otherwise, be guided by the following principles when deciding what weight should be given to alternatives:

- the consideration of alternatives in order to comply with policy requirements should be carried out in a proportionate manner;
- the IPC should be guided in considering alternative proposals by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity (including energy security and climate change benefits) in the same timescale as the proposed development;
- where (as in the case of renewables) legislation imposes a specific quantitative target for particular technologies or (as in the case of nuclear) there is reason to suppose that the number of sites suitable for deployment of a technology on the scale and within the period of time envisaged by the relevant NPSs is constrained, the IPC should not reject an application for development on one site simply because fewer adverse impacts would result from developing similar infrastructure on another suitable site, and it should have regard as appropriate to the possibility that all suitable sites for energy infrastructure of the type proposed may be needed for future proposals;
- alternatives not among the main alternatives studied by the applicant (as reflected in the ES) should only be considered to the extent that the IPC thinks they are both important and relevant to its decision;
- as the IPC must decide an application in accordance with the relevant NPS (subject to the exceptions set out in the Planning Act 2008), if the IPC concludes that a decision to grant consent to a hypothetical alternative proposal would not be in accordance with the policies set out in the relevant NPS, the existence of that alternative is unlikely to be important and relevant to the IPC's decision;
- alternative proposals which mean the necessary development could not proceed, for example because the alternative proposals are not commercially viable or alternative proposals for sites would not be physically suitable, can be excluded on the grounds that they are not important and relevant to the IPC's decision;
- alternative proposals which are vague or inchoate can be excluded on the grounds that they are not important and relevant to the IPC's decision; and
- it is intended that potential alternatives to a proposed development should, wherever possible, be identified before an application is made to the IPC in respect of it (so as to allow appropriate consultation and the development of a suitable evidence base in relation to any alternatives

which are particularly relevant). Therefore where an alternative is first put forward by a third party after an application has been made, the IPC may place the onus on the person proposing the alternative to provide the evidence for its suitability as such and the IPC should not necessarily expect the applicant to have assessed it.

4.5 Criteria for “good design” for energy infrastructure

- 4.5.1 The visual appearance of a building is sometimes considered to be the most important factor in good design. But high quality and inclusive design goes far beyond aesthetic considerations. The functionality of an object — be it a building or other type of infrastructure — including fitness for purpose and sustainability, is equally important. Applying “good design” to energy projects should produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction and operation, matched by an appearance that demonstrates good aesthetic as far as possible. It is acknowledged, however that the nature of much energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area.
- 4.5.2 Good design is also a means by which many policy objectives in the NPS can be met, for example the impact sections show how good design, in terms of siting and use of appropriate technologies can help mitigate adverse impacts such as noise.
- 4.5.3 In the light of the above, and given the importance which the Planning Act 2008 places on good design and sustainability, the IPC needs to be satisfied that energy infrastructure developments are sustainable and, having regard to regulatory and other constraints, are as attractive, durable and adaptable (including taking account of natural hazards such as flooding) as they can be. In so doing, the IPC should satisfy itself that the applicant has taken into account both functionality (including fitness for purpose and sustainability) and aesthetics (including its contribution to the quality of the area in which it would be located) as far as possible. Whilst the applicant may not have any or very limited choice in the physical appearance of some energy infrastructure, there may be opportunities for the applicant to demonstrate good design in terms of siting relative to existing landscape character, landform and vegetation. Furthermore, the design and sensitive use of materials in any associated development such as electricity substations will assist in ensuring that such development contributes to the quality of the area.
- 4.5.4 For the IPC to consider the proposal for a project, applicants should be able to demonstrate in their application documents how the design process was conducted and how the proposed design evolved. Where a number of different designs were considered, applicants should set out the reasons why the favoured choice has been selected. In considering applications the IPC should take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements which the design has to satisfy.
- 4.5.5 Applicants and the IPC should consider taking independent professional advice on the design aspects of a proposal. In particular, Design Council