



Meeting note

File reference	Consenting Forum
Status	Final
Author	Hannah Pratt
Date	8 May 2015
Meeting with	Consenting Forum
Venue	Meeting Room 4/00, Temple Quay House, Temple Quay, Bristol BS1 6PN
Attendees	Sheila Twidle - Planning Inspectorate Frances Russell - Planning Inspectorate Simone Wilding - Planning Inspectorate Hannah Pratt - Planning Inspectorate Shane Gould - English Heritage Sally Holloway - Environment Agency (by telephone) Carol Bolt - Environment Agency (by telephone) Alec Rhodes - Forestry Commission (by telephone) Ross Hodson - Marine Management Organisation (by telephone) James Bussell - Natural England Sarah Wood - Natural Resources Wales (by telephone) Shelley Vince - Natural Resources Wales
Meeting objectives	To discuss experiences of the pre-application and examination phases
Circulation	All attendees

1. Update on actions from last meeting

a. Good practice documents

The Planning Inspectorate welcomed the suggestions of good practice documents received since the last meeting and encouraged attendees to continue to provide examples. Good practice documents are published on the National Infrastructure webpage at:

<http://infrastructure.planningportal.gov.uk/application-process/example-documents/>

b. Evidence Plans in Wales

Natural Resources Wales (NRW) explained that whilst evidence plans have no formal application in Wales, they have been discussing the use of an 'Evidence Plan approach' for Welsh projects as they recognise the value they add to the process. NRW would welcome further discussion with the Planning Inspectorate on their implementation. NRW would likely expand the scope of such a plan to

include other assessment such as Environmental Impact Assessment (EIA) and Water Framework Directive (WFD) assessments.

c. Air quality assessment guidance documents.

The Planning Inspectorate confirmed they had received confirmation from the Environment Agency (EA) on guidance documents used for air quality assessments and explained they are currently reviewing them. The Planning Inspectorate will contact the EA directly if they have any outstanding queries.

d. Graphical breakdown of predicted future projects by sector

The Planning Inspectorate provided attendees of the last meeting with a breakdown of predicted future projects by sector and will circulate a revised version in approximately one month (June 2015).

e. Terms of Reference (ToR)

The Planning Inspectorate circulated draft ToRs for the Consenting Forum in advance of the meeting. It was agreed to update the contacts section. A final version is appended to this meeting note.

2. Procedural issues update

The Planning Inspectorate explained that the Department for Communities and Local Government (DCLG) published revised versions of the following guidance in March 2015:

- Planning Act 2008: guidance on the pre-application process
- Planning Act 2008: examination of applications for development consent

Specifically, the examination guidance provides details in relation to changes to live applications and explains the criteria that will be applied to such requests.

The Infrastructure Act 2015 received Royal Assent 12 February 2015 and for projects submitted post 6 April 2015 has enabled the earlier appointment of an examining authority post-acceptance. Secondary legislation is required to enable the appointment of a panel comprising of two examining inspectors which is anticipated to be brought forward later in 2015 but is dependent on the new government's priorities.

The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 came into force 6 April 2015 and has resulted in simplifications to the relevant representation form.

The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) (Amendment) Regulations 2015 will come into force on 14 July 2015 and will make the material change process for consented projects more proportionate. It will involve a maximum four month examination period, a two month reporting period and a two month decision period. DCLG intend to publish guidance on making changes post decision in the summer 2015 depending on the priorities of the new government.

The Planning Inspectorate is preparing an advice note on material changes to applications for live applications.

3. HRA Evidence Plans

Natural England (NE) explained that the Major Infrastructure and Environment Unit (MIEU) no longer undertake strategic work and as such will not monitor individual projects in the future. MIEU will also no longer take an active role in Evidence Plans. MIEU guidance will be revised by NE to clarify that applicants should approach the relevant statutory nature conservation body (NE) to initiate an Evidence Plan. This will ensure minimum disruption to this process.

All attendees agreed that Evidence Plans are useful and that expanding their scope to include EIA matters could also be helpful for managing the pre-application process, although it was agreed not to make this change to the current guidance.

4. Timetabling – issuing the Report on Implications for European Sites (RIES)

The Planning Inspectorate explained that examination timetables may include two potential dates for the publication of the RIES and the deadline for comments upon it. In such cases, the date of publication will depend on whether a second round of questions is deemed necessary. Interested Parties will not be sent letters to notify them of when the RIES is issued and therefore should ensure they are aware of the two potential dates for a RIES to be published. Interested Parties can also sign up for email alerts on individual projects via the relevant project page of the National Infrastructure webpage.

The Planning Inspectorate also clarified that the RIES is issued only once during the examination process and is not revised following the consultation process. The RIES is a factual account of the information and evidence provided to the ExA on HRA matters during the examination up to the date of the publication of the RIES, for the purposes of enabling the Secretary of State, as competent authority, to undertake their Habitats Regulations Assessment (HRA). It is not the ExA's opinion on HRA matters. Comments on the RIES will be invited by the ExA and any received will be taken into account as part of the ExA's Recommendation to the relevant Secretary of State. The Planning Inspectorate confirmed that text has been added to the Rule 6 letter to explain this.

The Planning Inspectorate are also in the course of updating Advice Note 10 within which they will clarify further that the RIES is issued only once.

5. HRA – materiality of Special Protection Area (SPA) citations and SPA review

NE explained that in England a new SPA is a material consideration once it has been formally consulted upon and becomes a potential SPA.

NE confirmed that the legal list of features for European sites is the citation that can be found on their website. There is no legal duty to include features identified in the 2001 SPA review. However NE would advise applicants to consult with them should there be a discrepancy between the two lists. NE also encourages applicants to future proof themselves from possible reviews of consent and carefully consider which features to assess.

Given the relevance in Wales and the potential for a policy difference in approach, NRW will advise PINS of the situation in England.

6. Advice on Best and Most Versatile (BMV) agricultural land

NE explained that applicants should seek to site their developments on poorer quality land and that the MAGIC website is the best evidence available for applicants to identify BMV land (although surveys may also be required). NE highlighted their Advice on Development Management Standard (<http://publications.naturalengland.org.uk/publication/5904575387140096?category=3769710>) which sets out that it will:

- Ensure developments takes account of BMV
- Advise on development affecting >20ha BMV
- Prioritise NE engagement based on size and amount of BMV
- Make data available to applicants and decision makers via the NE website
- Where BMV is lost, NE will advise local authorities of the duty under the NPPF (seek to use poorer quality land).

NE will advise on the quality of assessment and evidence underpinning it, for example will consider whether a soil strategy has been provided, however they will not comment upon the acceptability of losing some BMV.

7. Consultations/questions after the close of examination

The Planning Inspectorate explained that the Secretary of State has the power (Examination Procedure Rules, rule 19 (3)) to ask questions during the recommendation and decision period, and may be required to do so should new information come to light. The Secretary of State must also notify all Interested Parties if it differs from the ExA on a matter of fact material to the ExA's conclusion and give all interested parties the opportunity to make representations.

8. Referencing of documents in examination

The Planning Inspectorate explained that for projects going forward, a live Examination Library will be compiled continuously from acceptance onwards and published after each deadline. This will use short references and will enable all Interested Parties to easily refer to documents.

9. Decision making where no National Policy Statement (NPS) is in place

The Planning Inspectorate explained that sections 104 and 105 of the Planning Act 2008 (as amended) set out what, decision makers must have regard to in granting development consent.

If no designated NPS is in place - decide in accordance with s105: the SoS must have regard to

- any timely local impact reports;
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters which the SoS thinks are both important and relevant to its decision.

If a designated NPS in place - decide in accordance with s104: the SoS must decide the application in accordance with any relevant NPS unless this would lead to the UK being in breach of any of its international obligations, the SoS being in breach of any

duty imposed on the SoS by or under any enactment, the decision would be unlawful by virtue of any enactment, the SoS is satisfied that the adverse impact of the proposed development would outweigh its benefits or if the SoS is satisfied that any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met.

Under s105 the SoS must also have regard to

- any relevant NPS;
- any timely local impact reports;
- any matters prescribed in relation to development of the description to which the application relates; and
- any other matters which it thinks are both important and relevant to its decision.

10. Questions of who should advise on what constitutes ancillary development integral to the project

NRW explained that they did not consider they were the correct party to advise about what constitutes a development integral to a project during an examination and that this was for the decision maker to determine. The Planning Inspectorate explained that Interested Parties may be asked such a question during the examination phase to be given the opportunity to comment so that the examining authority can take such opinions into account. If NRW has a particular view on whether certain works should be considered integral or otherwise, then it is helpful if this is expressed as early as possible, including during the pre-application phase.

11. British Standard on EIA for offshore projects

The MMO confirmed that it had been involved in the production of a recently published 'Published Document' on EIA for offshore renewable projects. This is a guidance document produced with the British Standard Institution.

12. Marine Mammal Special Areas of Conservation (SAC)

NE explained that there are a number of proposed SACs with harbour porpoise features which will be formally consulted upon in summer 2015. For future projects, applicants will need to assess impacts on these sites as and when information becomes available. NRW confirmed that a similar exercise is being undertaken in Wales.

As a result of the proposed designation of the additional SACs, DECC may undertake a review of existing consents. For Deemed Marine Licence Conditions that have not been discharged, the MMO explained they would take into account new information as and when it is received and will discuss the matter further internally.

13. Timing of Statements of Common Ground (SoCG)

Attendees noted that a number of applicants had requested SoCGs to be signed very early in the examination and queried what the best timing for these was. The Planning Inspectorate explained the revised DCLG guidance provides more guidance on SoCGs and their timing. It is not possible to specify a 'correct' time for submission as this will vary on a case by case basis. The Planning Inspectorate advised attendees to clearly set out to applicants what circumstances should be met by the applicant before an attendee would consider they would be able to enter into a SoCG.

NE noted that they had used an issues tracker for some NSIPs which had proved a useful tool for focusing on issues in the examination stage and to keep abreast of what was agreed and when, and what matters were still outstanding.

14. Actions

- a. Planning Inspectorate to circulate updated breakdown of predicted future projects by sector in June 2015.
- b. NE to provide link to their Advice on Development Management Standard.
- c. Planning Inspectorate to arrange next meeting for September 2015.

CONSENTING FORUM TERMS OF REFERENCE

Background

Given the importance of consultation as part of the DCO application process which is intended to be front-loaded, government organisations consider it important to establish a regular forum to ensure effective working relationships. Accordingly, a 'Consenting Forum' has been established to facilitate knowledge sharing and provide up-to-date guidance and advice on NSIPs.

Objectives of the Forum

- To establish clear lines of communication and working relationships between the Planning Inspectorate and other regulatory authorities and statutory consultees involved in NSIP applications
- To discuss the range of NSIP proposals forthcoming to the Planning Inspectorate
- To discuss, and learn through experience of, previous and concurrent consenting processes relevant to NSIP projects
- To understand and improve the approach to pre-application consultation, examining and determining NSIPs
- To resolve concerns in respect of DCO requirements, associated deemed licensing and other permitting processes
- To promote clarity, certainty and efficiency of process, including for cross border applications, and applications where other regulators are involved
- To seek clarification on the internal processes put in place by Forum members for dealing with licensing and other consents associated with NSIP applications
- To discuss the sufficiency of resources across the Forum members and their ability to respond to applications
- To discuss any issues encountered or concerns of developers which have been raised with Forum members, and
- To advocate benchmarks for best practice, guidance and advice.

The Forum will not:

- Discuss the merits of individual NSIP applications (current or forthcoming)
- Discuss the details of projects, other than in the context of providing examples or case studies that illustrate general issues, and
- Discuss policy issues addressed by the National Policy Statements and other planning policy statements.

Membership

Organisation	Contact
The Planning Inspectorate (Chair)	Sheila Twidle – Sheila.Twidle@pins.gsi.gov.uk
Environment Agency	Sally Holloway – sally.holloway@environment-agency.gov.uk Carol Bolt – carol.bolt@environment-agency.gov.uk
Forestry Commission	Alec Rhodes - Alec.rhodes@forestry.gsi.gov.uk
Historic England	Shane Gould Shane.Gould@HistoricEngland.org.uk
Joint Nature Conservation Committee*	Lisa Chilton Lisa.Chilton@jncc.gov.uk
Marine Management Organisation	Ross Hodson Ross.Hodson@marinemanagement.org.uk
Natural England	James Bussell - James.bussell2@naturalengland.org.uk
Natural Resources Wales	Sarah Wood - sarah.wood@naturalresourceswales.gov.uk Shelley Vince- Shelley.Vince@naturalresourceswales.gov.uk
Welsh Government	Tamsin Brown Tamsin.Brown@wales.gsi.gov.uk

* Note: Given the limited number of NSIPs for which the Joint Nature Conservation Committee (JNCC) is responsible for providing advice, JNCC will not, as a general rule, be in attendance at meetings. JNCC will remain a member of the Consenting Forum for their information and will provide feedback via Natural England. This does not preclude JNCC from attending meetings should they wish.

Forum meetings will be coordinated by the Planning Inspectorate and held approximately every quarter at the Planning Inspectorate offices in Temple Quay House, Bristol. The preference is for all members to attend each scheduled meeting in person, however attendance arrangements will be flexible, to reflect the agenda and to allow for telephone-conferencing where appropriate.

Other statutory bodies and prescribed consultees may be invited by the Forum to participate in discussions where topic specific knowledge is required.

Terms of Reference

The Forum will:

1. operate within these Terms of Reference and focus on issues associated with NSIPs only
2. engage primarily with relevant statutory bodies that take a pivotal role in providing statutory and informal advice on NSIP developments, notably on environmental matters, and associated consenting and licensing activities
3. seek a structured and proactive approach to pre- application processes and establish effective working relationships
4. seek agreement of how cross-border NSIPs are to be dealt with

5. consider issues affecting consenting decisions and the DCO requirements (and conditions of any deemed licences) that secure effective mitigation
6. where appropriate, liaise with other groups that deal with topics related to NSIPs, and
7. keep the Terms of Reference of the Forum under review.

The Planning Inspectorate will be responsible for recording a meeting note which will be published on the National Infrastructure webpage. Attendees should therefore not raise issues that they would not wish to be made public.

Date: 5 June 2015