



# Gatwick Airport Northern Runway Project

The Applicant's Position on Sections 104 and 105 of the  
Planning Act 2008

**Book 10**

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## 1 Introduction

### 1.1 Purpose of this Document

- 1.1.1 The Applicant has previously set out its position on how sections 104 and 105 of the Planning Act 2008 (“the 2008 Act”) should be interpreted and applied in this case, in its Deadline 1 Submission - **The Applicant’s Response to Actions - ISH 1: The Case for the Proposed Development** [[REP1-062](#)], in its Deadline 3 Submission - **The Applicant’s Response to the Local Impact Reports** [[REP 3-078](#)], and in its Deadline 4 Submission - **Response to Deadline 3 Submissions** [[REP 4-031](#)].
- 1.1.2 It has continued to review the representations submitted by the Joint Local Authorities (“JLAs”), which have been set out in their Local Impact Report [[REP 1-068](#)], their response to ExQ1 CS.127 in [[REP 3-135](#)] and most recently in Appendix II to their Deadline 5 Submission - Comments on any further information/ submissions received by Deadline 4 [[REP 5-094](#)].
- 1.1.3 The Applicant remains unpersuaded that it should adopt the JLA approach to these provisions. As a result, there are differing interpretations before the Examining Authority and the Secretary of State. However, the Applicant is prepared to accept that whichever interpretation is adopted would not affect the outcome of the decision on the application.
- 1.1.4 The Applicant explains its position below, after setting out the approach it has followed and commenting briefly on the interpretation advanced by the JLAs.
- 1.1.5 Section 104 of the Planning Act 2008 (“the 2008 Act”) applies “in relation to an application for an order granting development consent if a national policy statement (“NPS”) has effect in relation to development of the description to which the application relates”.<sup>1</sup> In deciding the application the Secretary of State must, amongst other requirements, have regard to “any NPS that is in effect in relation to development of the description to which the application relates (‘a relevant NPS’),<sup>2</sup> along with “any other matters which the Secretary of State thinks are both important and relevant to the decision”.<sup>3</sup> The application must be decided “in accordance with any relevant NPS, except to the extent that”<sup>4</sup> one or more identified subsections applies. These include subsection (7), which applies

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<sup>1</sup> Section 104(1).

<sup>2</sup> Section 104(2)(a).

<sup>3</sup> Section 104(20)d).

<sup>4</sup> Section 104(3).

if the Secretary of State is satisfied that the adverse effects of the proposed development would outweigh its benefits.

- 1.1.6 Section 105 of the 2008 Act applies “in relation to an application for an order granting development consent if section 104 does not apply in relation to the application”.<sup>5</sup> In deciding the application the Secretary of State must have regard to identified matters including any local impact report as well as any other matters which he thinks are both important and relevant to the decision.<sup>6</sup>
- 1.1.7 The application in this case is for development that includes both airport-related development and highways-related development under sections 14(1)(i) and (h), 22(1)(b), (3) and (4)(b) and 23(1)(b), (4) and (5)(a) of the 2008 Act, as well as associated development under section 115.
- 1.1.8 The application relates in part to “*development of the description*” in relation to which the NNNPS has effect, because the NNNPS has effect in relation to development which meets the thresholds for nationally significant road infrastructure projects as defined by the 2008 Act.<sup>7</sup>
- 1.1.9 However, the application also relates to development that is not “*development of the description*” in relation to which an NPS is in effect, because there is no NPS in effect in relation to the proposed airport-related development.
- 1.1.10 Further the development in the application (despite partly including development in relation to which an NPS is in effect and partly including development in relation to which no NPS is in effect) is proposed as a single indivisible project, albeit one with the primary aim of providing airport-related development that is facilitated by highways-related development. The highways-related development is not proposed as a primary or as a severable element of the wider project. It would not be developed or have land-use effects other than those which arise as a result of and with the effects of the airport-related development, and vice versa.
- 1.1.11 Sections 104 and 105 do not make explicit or specific provision for these circumstances. In this context the Applicant and the JLAs agree that it is necessary to conduct an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words under consideration, read in context.<sup>8</sup>

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<sup>5</sup> Section 105(1).

<sup>6</sup> Section 105(2).

<sup>7</sup> See para. 1.1 of the NNNPS, as well as para. 1.2. See too paras 1.4.4-5 of Chapter 1 of the Environment Statement [APP-026]

<sup>8</sup> Per Popplewell LJ in Deutsche Bank AG v Sebastian Holdings Inc [2024] EWCA Civ 245 at [11].



- 1.1.12 There is no dispute between the Applicant and JLAs that the 2008 Act allows for development in relation to which an NPS is in effect, as well as development in relation to which no NPS is in effect, to be included in a single application.
- 1.1.13 Similarly there is no dispute that the legislation should be interpreted so as to allow for a decision under which development consent may be granted (not precluded), in relation to a single application which covers development in relation to which an NPS is in effect, as well as development in relation to which no NPS is in effect.
- 1.1.14 Against this background, the initial question which arises, therefore, is whether the application of section 104 “*in relation to an application for an order granting development consent [“DCO”]*” means that it applies to all aspects of the application for a DCO, even if the “*development of the description to which the application relates*” includes development in relation to which no other NPS is in effect.
- 1.1.15 Different approaches in response to this initial question have been suggested in the representations submitted by the Applicant and JLAs. Both have considered the implications of the EFW Group case and it is convenient to review that judgment briefly here.

## 2 The EFW Group Limited Case

- 2.1.1 In **The Applicant’s Response to Actions - ISH 1: The Case for the Proposed Development** [[REP1-062](#)] (paras 2.1.2-21), the Applicant set out the considerations which had informed the approach taken in the Planning Statement.
- 2.1.2 The Planning Statement was informed by the case of EFW Group Limited v Secretary of State for Business, Energy and Industrial Strategy [2021] EWHC 2697 (Admin). The application in that case included (i) a capacity increase to an existing energy from waste plant resulting in a capacity above 50MW and (ii) the construction of a new 42MW energy from waste plant. The Examining Authority there applied section 104 to the capacity increase and section 105 to the new plant, as the latter did not pass the capacity threshold in the Act to be nationally significant infrastructure project (“NSIP”) and was only included in the application due to a section 35 direction from the Secretary of State. In his decision, the Secretary of State adopted the contrary view that sections 104 and 105 are “mutually exclusive” such that “it would not be correct to determine different parts of the Application under different provisions”. A challenge was made to the

decision to refuse the development that was not an NSIP and subject to the section 35 direction. By the time of trial, the Secretary of State had changed his position and concluded that the ExA's approach was correct – but confirmed this would have made no difference to the decision.

2.1.3 Dove J held as follows:

“59. Whilst specific circumstances of the kind presented by the application in the present case may not have been directly foreseen by those framing the 2008 Act, it is clear that the overarching approach of the legislation is that **decisions should be reached in relation to proposals for development in respect of which an NPS has effect deploying the framework within section 104 of the 2008 Act, whereas proposals for development within the statutory framework’s decision-making process for which there is no applicable NPS having effect are to be decided pursuant to the framework provided by section 105 of the 2008 Act. Such an approach clearly reflects the language of section 104(1) which refers to an NPS having effect ‘in relation to development of the description to which the application relates’.** It is less consistent with a literal reading of section 105(1), but when that text is placed in the context of the purpose and structure of the legislation as a whole, it is clear that section 105(1) should be interpreted as applying to those discrete elements of an application which comprise proposals for development for which no NPS which [*sic*] has effect. I accept the submission of the defendant that section 105 of the 2008 Act should be interpreted as applying to free-standing parts of an application to the extent that ‘section 104 does not apply in relation to the application’. Such an approach reflects the purpose and intent of the legislation without unduly disturbing the effect of the statutory language”.

2.1.4 This finding was supported by the following:

“58. **To suggest that by incorporating a project in respect of which the NPS has no effect within an application for a separate free-standing project which does fall within the scope of an NPS it is possible effectively to enlarge the scope of the NPS so as to include a project to which it was not designed to apply would clearly run contrary to the overall statutory scheme...It would be inconsistent with the centrality**

**of the NPS within the statutory decision-making framework for its scope to be enlarged and its provisions bypassed by the manner in which an application has been formulated”.**

- 2.1.5 It is common ground that the facts in EFW Group were different to the present case. One component of the development proposed there (the new plant) was only included in the application for development consent by virtue of a direction from the Secretary of State under section 35 of the Act. In particular, the different elements of the application were regarded as distinct (and in fact led to a decision under which consent was refused for the new plant but granted for the capacity increase to the existing plant). In this case the highway and airfield works comprised in the Project are closely interrelated and proposed together. There is no circumstance under which the Applicant seeks consent for one element of the works without the other, as they are indivisible.
- 2.1.6 Nevertheless, the Applicant considered that the findings in the EFW Group case remained capable of application to this case, because the judgment finds generally that section 104 should be applied in relation to development in respect of which an NPS has effect, whereas section 105 should be applied to development where no NPS is in effect. The judgment ultimately rejected the proposition that where an NPS was in effect in relation to an “application”, a proper interpretation of section 104 required the entire development covered by that application to be considered under that provision. As explained below, the arguments advanced by the JLAs are not consistent with these findings.

## 3 Approaches

### 3.1 Introduction

- 3.1.1 The factual distinction on the facts between the current application and that considered in the EFW Group case has led the JLAs to conclude that only where an application includes “free-standing parts” or “discrete elements” in respect of which no NPS is in effect should section 105 be applied to those parts.<sup>9</sup> They consider that in other cases, such as the present application, if an application includes any “development of the description” in relation to which an NPS is in effect, that suffices to engage section 104 exclusively. Thus where the present application includes highways-related development, in relation to which the NNP is in effect, section 104 is engaged in relation to the entire application, including the airport-related development.

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<sup>9</sup> See para.s 6.6-7 of the Joint West Sussex LIR [[REP 1-068](#)].

- 3.1.2 The Applicant considered that applying section 104 to the overall scheme would focus the consideration of policy on an NPS which was only in effect in relation to highways-related development, but not in effect in relation to the airport-related development, which was the primary element of the application. Having regard to the EFW Group judgment, and its reference to the centrality of the NPS to the decision-making framework, it was not considered appropriate to apply the detail of NNNPS policy to the airport-related development.
- 3.1.3 The Applicant also had regard to the findings in the EFW Group judgment which indicate that they encompassed cases where it was possible to identify discretely the development within a single application in respect of which there was a relevant NPS in effect, as well as the development in respect of which no NPS was in effect. On this approach, if an application includes development which is not “*development of the description*” in relation to which an NPS is in effect, section 104 only applies to the extent that an NPS is in effect in relation to the “development of the description” to which the application relates. In this case, the NNNPS does not contain detailed policies that are directed at airport-related development.
- 3.1.4 As a result, the Applicant stated that the airport-related development should be considered under section 105 (as there is no NPS in effect in relation to this element of the development) and the highway-related development should be considered under section 104 (where the NNNPS does have effect).<sup>10</sup>
- 3.1.5 The Applicant notes that the position of the JLAs - that section 104 was engaged exclusively because an NPS (the NNNPS) is in effect in relation to the application – does not reflect the findings in the EFW Group case. Whilst the Court saw “some force” in the argument that the use of word “application” in both section 104 and 105 required the whole application to be determined either under section 104 or 105<sup>11</sup> - as the JLAs argue in this case - it ultimately rejected the contention that where an NPS was in effect, the use of the word “application” in section 104 created a mutual exclusivity between sections 104 and 105, such that an entire application could only be determined either under section 104 or section 105.<sup>12</sup> Instead, it was “*clear that the overarching approach of the legislation is that decisions should be reached in relation to proposals for development in respect of which an NPS has effect deploying the framework within section 104 of the 2008 Act, whereas proposals for development within the statutory framework’s decision-making process for which there is no applicable*”

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<sup>10</sup> See para.s 1.5.16-19, 8.1.2-3, 9.1.1-3 and 9.1.40-44 of the Planning Statement [\[APP 245\]](#)

<sup>11</sup> At [57].

<sup>12</sup> At [48].



*NPS having effect are to be decided pursuant to the framework provided by section 105 of the 2008 Act*.<sup>13</sup>

3.1.6 The different approaches to sections 104 and 105 are considered further below, in the context of the terms of the NPSs that are material to the determination of the application.

3.2 Sections 104 and 105 are both applicable

### Section 105

3.2.1 As the Applicant explained in **The Applicant's Response to Actions - ISH 1: The Case for the Proposed Development** [[REP1-062](#)], although the airport-related development fell to be considered under section 105, it was still necessary to have regard to the fact that this development would come forward as part of a wider scheme, in respect of which any effects arising from the airport-related development could only and inevitably arise as part of the wider proposals.

3.2.2 In the circumstances of this case, it would be artificial to somehow separate out the effects of the airport-related development alone as this would not accurately represent how the effects of project including the airport-related development would arise, because there are no circumstances in which the effects of the airport-related development would be realised on their own (that is other than as part of the wider project), or where they would be more significant if considered by reference to the airport-related development on its own. The impacts of the airport-related development are taken into account, as part of the wider land-use effects of which they must form part.

3.2.3 Further, the policy framework of the ANPS is intended to achieve that purpose. Although the ANPS does not have effect in relation to the airport-related development, and is focussed more directly on the development of a new runway at Heathrow, that project was known to include highway works (including works to the M25)<sup>14</sup> and unsurprisingly, therefore, it included policy tests which anticipated those works forming part of a wider application. It recognised that airport-related development may come forward with other development, including surface access proposals, and includes policies which apply to the overall development proposed, such that it is appropriate to consider the policy

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<sup>13</sup> At [59].

<sup>14</sup> Para.s 5.12-13.

framework of the ANPS as well suited to assess this project as a whole.<sup>15</sup>

Considering the whole project against the ANPS would not improperly enlarge the scope of the NPS.<sup>16</sup> In principle, its policy framework is fit for the purpose of ensuring all aspects of the NRP are appropriately considered.

- 3.2.4 Overall, this approach seeks to apply the findings in the EFW Group case; seeks to focus consideration of the airport-related development on a policy framework that is designed for that purpose; recognises that NPS policy relating to airport-related development itself acknowledges that such development will form part of a wider project and sets out policy accordingly; and recognises the reality that even if the airport-related development can be identified discretely as such for the purposes of section 105, its effects can only arise as part of the wider scheme. This approach also relates more naturally to cases such as this where the fundamental purpose of the application is not to provide highways-related development, but to provide airport-related development. It recognises that under section 105, where airport-related development is proposed only as part of a wider scheme including highways-related development, the important and relevant matter which reflects the only circumstances in which development can take place will be the land use implications of the project as a whole. It is also consistent with the need to consider environmental information which applies to the project as a whole and must be addressed as such as an important and relevant matter under that provision.
- 3.2.5 However, even if the airport-related development were notionally disaggregated from the rest of the project, its effects could only fall within the effects that have already been assessed in relation to the project pursuant to ANPS policy and as such, the Applicant does not consider that any different conclusion would be

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<sup>15</sup> By way of example, there is specific guidance on surface access (para. 5.5 et seq), including policy which is applied to “schemes and related surface access proposals” (para. 5.13; and see too para. 5.11); accessibility is considered by reference to new airports infrastructure and associated surface access facilities (para. 4.74); air quality impacts are to include surface access effects (para. 5.33); and mitigation for air quality may include “changes to the layout of surface access arrangements”; and the tests for decision-making refer generally to the “scheme” and to air quality impacts over the wider area (para.s 5.42-3); noise impacts are to take into account “operational noise (including from surface access arrangements) and aircraft noise” (para. 5.52); and the tests for decision-making apply to the overall grant of development consent (para. 5.68); carbon emissions are to be assessed by including those from surface access (para. 5.77); and the test for decision-making is applied to the overall development consent (para. 5.82); returning to general principles of assessment, policy states generally that “in considering any proposed development, and in particular when weighing its adverse impacts against its benefits, the Examining Authority and the Secretary of State will take into account: its potential benefits...; and its potential adverse impacts (including any longer term and cumulative adverse impacts) as well as any measures to avoid, reduce or compensate for any adverse impacts” (para. 4.4); and all proposals that are likely to have significant effects on the environment must be accompanied by an environmental statement describing the aspects of the environment likely to be significantly affected “by the project” (para. 4.12).

<sup>16</sup> The Applicant notes para. 4.7 which states that “where the applicant’s proposals in relation to surface access meet the thresholds to qualify as nationally significant infrastructure projects under the Planning Act 2008...the Secretary of State will consider those aspects by reference to both the National Networks NPS and the Airports NPS, as appropriate”. This is not taken to mean that the airport-related development must be considered discretely; rather the reference to considering those aspects by reference to the ANPS remains consistent with an overall project comprising airport-related development facilitated by highway-related development being considered pursuant to ANPS policies.

reached. Any conclusion reached under section 105 as set out above would be subject to the application of section 104 to the highways-related development, in respect of which the NNNPS is in effect. This is dealt with further below.

#### Section 104

- 3.2.6 Following the approach taken by the Applicant, the NNNPS would be applied to the highway-related development only.
- 3.2.7 As with the analysis that applies to section 105, it is necessary to consider how the EFW Group judgment may be applied to cases where the project is proposed as an indivisible scheme, having regard also to the terms of the relevant NPS.
- 3.2.8 The Applicant recognises that, as with the analysis set out above, there is artificiality in any exercise that seeks to separate out the effects of the highways-related development from those of the project as a whole, particularly in circumstances where the effects of the highways-related development will only ever be realised as part of the wider project.
- 3.2.9 That said, the policy set out in the NNNPS is, subject to a matter raised below, read more naturally as applying to highways-related development specifically and not to other development such as airport-related development. In this respect it differs from the ANPS which, as set out above, recognises that airport-related development will be likely to form part of a wider project including surface access development.
- 3.2.10 Further, as set out above, section 104 is structured to accord greater priority to the consideration of an NPS than arises under section 105.
- 3.2.11 In this context, the Applicant considers that the assessment conclusions reached in respect of the whole scheme through the application of the policy principles in the NNNPS would not differ if policy is applied to the highways-related development on its own. The Applicant notes that the policy tests (like the ANPS) are arranged by topic (as shown in section 8 of and **Appendix C** to the **Planning Statement** [APP-248]), establishing similar policy principles to those contained in the ANPS. The Applicant does not consider that applying these policy principles to a disaggregated highways-related development would alter the policy assessment that has been carried out, because the effects of that development would inevitably fall within the land use effects that have been assessed having regard to the overall project.

3.2.12 In this respect the Applicant also notes that if the highway-related development is considered under section 104 by reference to the NNNPS, the NNNPS advises<sup>17</sup> that “*in considering any proposed development, and in particular, when weighing its adverse impacts against its benefits, the Examining Authority and the Secretary of State should take into account:*

- *its potential benefits, including the facilitation of economic development...and any long-term or wider benefits;*
- *its potential adverse impacts, including any longer-term and cumulative adverse impacts...*”.

3.2.13 Helpfully, the application of this policy would allow the decision maker to take into account the same considerations as arise in relation to the assessment of the whole project, and in so doing reflect the similar exercise which would be followed in respect of the airport-related development under section 105. On either approach the Applicant considers that the same judgments would be reached.

#### Section 104 only applicable

3.2.14 If, contrary to the above approach, the application is to be determined exclusively under section 104, as the JLAs suggest, there are different courses which may be taken.

3.2.15 The JLAs have stated that “*Because the NN NPS does not contain any guidance on the assessment of ‘airport related development’, and that development is a fundamental component of the proposal, the NN NPS does not provide a sufficient guide to determine that the application, taken as a whole, is in accordance with it*”.<sup>18</sup> They add that “*the application, taken as a whole, is ‘not in accordance with’ with NNNPS because the application includes so much non-highway related development which is not development addressed by policies in the NNNPS*”;<sup>19</sup> and that it is “*not possible, having regard to the terms of the NNNPS, to decide that the application (taken as an integrated and indivisible whole) is in accordance with the NNNPS*”. This is because the “*non-highways development is not in accordance with the NNNPS*”.<sup>20</sup>

3.2.16 This cannot be an appropriate construction. It invites a conclusion on whether an application is in accordance with an NPS under section 104(3) without applying

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<sup>17</sup> Para. 4.3.

<sup>18</sup> Para. 6.8 of the West Sussex Joint LIR [REP1-068] and para 4.8 of the Surrey Joint LIR [REP1-097].

<sup>19</sup> Para. 10 of the Deadline 5 Submission - Comments on any further information/ submissions received by Deadline 4 [REP 5-094].

<sup>20</sup> Ibid.

the policies within that NPS – only on the basis that they do not fall to be applied because they do not relate to airport related development. This approach makes it inevitable that an application which includes some development in relation to which no NPS is in effect must automatically be regarded as not being in accordance with an NPS that is in effect for the purposes of section 104(3). The statutory framework cannot have been intended to be applied in this distorted way simply because an NPS does not have effect in relation to part of the proposed application.

- 3.2.17 However the JLAs go on to say (correctly) that the duty in section 104(3) to decide the application in accordance with the NNNPS is not determinative of whether a DCO should be made or not in relation to the application, and that the decision should be reached after having regard to the matters set out in section 104(2),<sup>21</sup> including the ANPS (and any LIR).<sup>22</sup>
- 3.2.18 They add that for the purposes of explaining their approach to section 104, they are prepared to assume that none of the exceptions in section 104(4)-(8) applies and that the highways-related development can be regarded as being in accordance with the NNNPS.<sup>23</sup> On this basis, the Applicant understands the JLAs to conclude that consent may be granted in respect of the entire application, having regard to important and relevant matters including the ANPS and notwithstanding their conclusion that the application does not accord with the NNNPS; however this is not made clear.
- 3.2.19 The Applicant considers that if the application is to be determined only under section 104, there is an alternative approach which avoids the initial concern with the construction of section 104(3) as set out above.
- 3.2.20 This course recognises that the NNNPS is to be applied to the highways-related development but must include applying its policy on weighing the wider benefits of that development against its cumulative impacts.<sup>24</sup> On this analysis the application of policy on weighing the wider benefits and effects would allow the overall effects of the project to be taken into account in deciding whether the application was in accordance with the NNNPS.
- 3.2.21 This approach would result in the application according with the NNNPS, because there would be no conflict with any aspect of the NNNPS as applied to the highways-related development and in any event the consideration of the

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<sup>21</sup> Para. 15 of REP 5-094.

<sup>22</sup> Para. 6 of REP 5-094.

<sup>23</sup> Para. 9 of REP 5-094.

<sup>24</sup> Paragraph 4.3.



wider benefits and effects of the overall project (as per the assessment which has already been undertaken by reference to the ANPS in the Planning Statement) would demonstrate that benefits outweigh the adverse effects. The application of ANPS policy as set out earlier could be regarded as an important and relevant matter but it would not alter the consideration of the wider benefits and effects of the overall project under paragraph 4.3 of the NNNPS.

- 3.2.22 The presumption in favour of the NNNPS under section 104(3), as well as the exceptions under sections 104(3)-(8) would be applied accordingly, including the consideration of section 104(7) as applied to the overall application. Under section 104(7), any consideration of the adverse effects and benefits of the proposed development would address the overall implications of the Project, because these would be enabled by the highway works as part of the application.
- 3.2.23 The Applicant considers that its interpretation and application of section 104 should be followed, if the application is to be determined exclusively under that provision. However, on the same assumptions as the JLA makes (ie that the highway-related development accords with the NNNPS or can be made to be, and that none of the exceptions in section 104(4)-(8) apply), the outcome would not differ depending on whether the JLAs' approach or the Applicant's alternative were followed.

## 4 Conclusion

- 4.1.1 Neither party at this stage is able to agree to the approach advocated by the other. In particular, the Applicant considers that the approach of the JLAs to section 104 distorts the operation of the statutory presumption and leaves unclear how section 104 applies to the project as a whole.
- 4.1.2 The Applicant has sought to apply the findings of the EFW Group judgment to this application, such that the airport-related and highway-related development are considered under section 105 and 104 respectively as set out above, albeit as part of a wider application and having regard to the terms of the NPSs that are relevant in this case.
- 4.1.3 However, even if the application were determined only under section 104, the Applicant's suggested approach to section 104 would lead to the conclusion that the application accords with the NNNPS as a whole and none of the exceptions in sections 104(4)-(8) apply.<sup>25</sup>

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<sup>25</sup> See Paragraph 9.144 of the Planning Statement [\[APP 245\]](#).

- 4.1.4 The Applicant does not consider that the JLAs have adopted a correct approach to the construction of section 104. However the Applicant is prepared to accept that the conclusions each party reaches on whether consent should be granted would not differ, whether the application was determined under section 104 and 105, or whether the application was determined under the alternative approaches to section 104, as set out above. The Applicant is content for the ExA to proceed on this basis, and for Secretary of State to seek any further information or clarification as is considered necessary in advance of determining the application.<sup>26</sup>

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<sup>26</sup> See para. 16 of REP 5-094.