



Working with public bodies

Advice note eleven: Working with public bodies in the infrastructure planning process

The Planning Inspectorate and Nationally Significant Infrastructure Projects (NSIPs)

The planning process for dealing with proposals for NSIPs was established by the Planning Act 2008 (the PA2008). The PA2008 process involves an examination of major proposals relating to energy, transport, water, waste, waste water and business and commercial projects, and includes opportunities for people to have their say before a decision is made by the relevant Secretary of State as to whether or not development consent should be granted.

The Planning Inspectorate carries out certain functions related to national infrastructure planning on behalf of the Secretary of State. In this version of Advice Note Eleven, reference is generally made to ‘the Planning Inspectorate’, however, when dealing with decision-making in relation to applications or proposed applications for development consent reference is made to the Secretary of State.

Status of this Advice Note

Experience to date has shown that applicants and others welcome detailed advice on a number of aspects of the PA2008 process. This advice note forms part of a suite of such advice provided by the Planning Inspectorate. This version of Advice Note Eleven dated November 2017 supersedes all previous versions. It has no statutory status.

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1. Introduction

The Planning Act 2008 (PA2008) and related secondary legislation set out a range of bodies that may be able to participate in the nationally significant infrastructure planning process.

1.1 This advice note is aimed at:

- public bodies that are consultees under the PA2008; and
- those public bodies (where applicable) which have powers to grant consents etc, other than development consent, that may be required for the construction, use or operation of a Nationally Significant Infrastructure Project (NSIP).

1.2 This advice note explains the framework which governs the involvement of consultees at each stage in the PA2008 process and sets out the key principles which the Planning Inspectorate hopes will underpin working arrangements. This advice note does not deal with the role of local authorities under the PA2008 which is instead outlined separately in the Planning Inspectorate's Advice Note Two.

1.3 The advice note is structured as follows:

- The main body covers the generic aspects of the Planning Inspectorate's involvement with other public bodies in the process, both in relation to their role as consultees to proposed development consent applications, and where they have parallel consenting powers.
- Separate annexes set out in more detail the specific roles played by individual bodies and highlights their particular interactions with the Planning Inspectorate, at key stages in the PA2008 process. Additional annexes may be added over time. Annexes can be downloaded from the Planning Inspectorate's website.

1.4 This advice note, and the annexes to it, will be kept under review in the light of any changes to the infrastructure planning process and the statutory responsibilities of relevant bodies.

2. General working arrangements

There are a number of general principles which can help to promote effective working relationships between the Planning Inspectorate and relevant consultees:

- **Good communication and dialogue at the Pre-application stage.** Consultees have a number of important roles to play at this stage, discussed further below. For example, information sharing between the Planning Inspectorate and consultees about the different elements of the consenting process for a particular NSIP is an important complement to consultees' formal roles in responding to any Environmental Impact Assessment (EIA) scoping consultation¹ and to applicants' consultation duties under s42 of the PA2008.
- **Timeliness.** The PA2008 and relevant secondary legislation specify timescales relevant to the process, for example in relation to EIA scoping and s42 consultation. It is therefore very important for consultees to respond promptly to statutory deadlines including any consultation requests. For example if a consultation body does not respond to an EIA scoping consultation request within the defined statutory deadline, the Planning Inspectorate (on behalf of the Secretary of State) will assume that they do not have comments to make on the information to be provided in the Applicant's Environmental Statement (ES).
- **Transparency.** Consultees and the Planning Inspectorate have different roles within the PA2008 process. To ensure impartiality is protected, the Planning Inspectorate operates an openness and transparency policy.

1. Regulation 10 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the EIA Regulations")



Consultees should expect that notes of any meetings with the Planning Inspectorate about NSIP proposals, and correspondence, will be made publicly available.

The Pre-application stage

3. Pre-application consultation under s42 of the PA2008

3.1 Pre-application consultation by applicants is a key part of the PA2008 process. The PA2008 requires applicants to consult a range of consultees. These include organisations with particular expertise in or responsibility for matters relevant to the proposal such as those organisations featured in the annexes of this advice note.

3.2 There are a number of important points for consultees to be aware of including:

- Consultees can provide technical information which applicants should consider at an early stage, for example in drafting Articles and Requirements in their draft Development Consent Order (DCO) to mitigate negative effects. It is a key feature of the PA2008 process that applicants are able to include detail of this nature in their applications before they are submitted. This allows the examination of accepted applications to focus on issues where questions remain. Full and meaningful consultation, before the submission of an application, also reduces the risk of material and/ or non-material changes to the application being proposed at too late a stage in the process.
- Consultees should therefore respond as fully and as early as possible to applicants' requests for advice on proposals. This will help facilitate the preparation of well-prepared applications for development consent.
- It is possible for applicants to combine consultation required by s42 of the PA2008 with a request for an EIA scoping opinion carried out by the Planning Inspectorate (on behalf of the Secretary of State). If this approach is taken it will result in more than one form of consultation taking place at the same time. The Planning Inspectorate considers that this approach should be avoided as it may lead to confusion and ultimately frustrate the process.
- Consultees may also be asked to advise applicants on matters under the Conservation of Habitats and Species Regulations 2010 (as amended) (the Habitats Regulations) and/ or the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017. The Planning Inspectorate has published separate advice notes on these subjects^{2,3}.
- Applicants must include draft Requirements in their draft DCO, taking into account the views of relevant consultees and others. Consultees may be responsible for discharging such Requirements if development consent is granted.
- At the Pre-application stage, where possible, the Planning Inspectorate encourages consultees with related areas of responsibility to co-ordinate their responses.

4. Environmental Impact Assessment

4.1 A key area of interaction between the Planning Inspectorate and consultees is where proposed NSIP developments are EIA development. The key points to note are as follows:

- Applicants are required to complete EIA Regulation 8 by either stating their intent to provide an ES in respect

2. See the Conservation of Habitats and Species Regulations 2010/490 as amended by the Conservation of Habitats and Species (Amendment) Regulations 2011 (refer to the Planning Inspectorate Advice Note Ten).

3. See the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (refer to the Planning Inspectorate Advice Note Eighteen)



Harbour Order applications, unless the development of the harbour itself is an NSIP or an integral part of an NSIP⁸. Although it is for applicants to decide which route is the most appropriate for their Proposed Development, it should be noted that there is no Secretary of State/ MMO dual jurisdiction in relation to the same set of works⁹.

5.5 The Planning Inspectorate encourages applicants to provide a ‘schedule of consents’ setting out any consents required alongside the DCO for the Proposed Development at the earliest possible point at the Pre-application stage in order to clarify to which bodies those required applications will be submitted and how such submissions align with the DCO application process. Consultees should seek to assist applicants in compiling a comprehensive and accurate schedule.

5.6 Where other consents etc are to be included in a DCO application, consultees and applicants should time their interactions to enable agreement on matters as much as possible at the Pre-application stage. Applicants may also provide information in support of their DCO application stating how close they are to obtaining any consents etc required under other legislation.

5.7 The timing of decisions on consents etc other than the DCO may have an important impact on the examination of the application and should be considered carefully. Government policy on this point, as set out in the National Policy Statements, will be an important consideration in this respect. Greater detail on the interaction between the PA2008 and specific, relevant consents etc required under other legislation are set out in the annexes to this advice note with respect to individual consultees. Specific considerations are also likely to apply in individual cases.

6. Interaction between the Planning Inspectorate and relevant public bodies

6.1 Specific points that are not addressed in this advice note are clarified in a series of separate annexes. Each annex includes:

- specific roles to be played by the Planning Inspectorate and the relevant public body;
- specific high level agreements or arrangements;
- relevant contact points; and
- a list of relevant consents, licences or authorisations that apply, and considerations relating to how those interact with the PA2008 process.

8. See s33(2) of the PA2008

9. See s120(9)(a) of the PA2008

Further information

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