

NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS: HOUSING DEVELOPMENT

HOUSING PROPOSALS CAN NOW BE INCLUDED IN NATIONAL INFRASTRUCTURE APPLICATIONS IF THEY ARE INFRASTRUCTURE-RELATED. THIS FOLLOWS THE INTRODUCTION OF NEW LEGISLATION IN MARCH 2017 AND MARKS A SIGNIFICANT CHANGE IN THE PLANNING REGIME FOR NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS, WHICH PREVIOUSLY EXCLUDED PERMANENT DWELLINGS FROM APPLICATIONS.

THIS BRIEFING NOTE SETS OUT THE PRINCIPLES OF THE NSIP PROCESS, HOW AND WHEN HOUSING CAN BE INCLUDED IN DCO, AND SOME OF THE KEY DETAILS THAT MAY BE RELEVANT TO POTENTIAL HOUSING APPLICANTS.

FURTHER INFORMATION CAN BE FOUND IN GUIDANCE FROM THE DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT.

THE CONSENTING REGIME FOR NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS

The 2008 Planning Act established a new process for nationally significant infrastructure projects (NSIPs), with key features including:

- Creation of a 'Development Consent Order' (DCO) granting powers including planning permission and potentially other consents.
- The ability for applicants to prepare the draft DCO they want consented.
- A statutory emphasis on pre-application engagement with local authorities, statutory bodies and local communities.
- The potential to request compulsory acquisition of rights and / or land within the DCO.
- Statutory timescales for assessing and deciding applications.

The process is broken down into 6 distinct phases:



More detail can be found in our briefing note entitled 'Nationally Significant Infrastructure Projects : An Introduction'.

HOUSING AND NATIONAL INFRASTRUCTURE

The key elements from the new legislation and guidance are:

- A stand-alone housing scheme cannot be a National Infrastructure project. Housing must form part of a wider proposal and be specifically defined as 'infrastructure related housing'.
- A maximum of 500 dwellings can be included, and Government guidance currently dissuades anything greater¹. In addition, where the National Planning Policy Framework specifies development should be restricted (e.g. Green Belt), there are likely to be greater restrictions on the numbers allowed as part of a DCO.

- The legislation only applies to projects in England, as housing powers for Wales, Scotland and Northern Ireland are devolved to their respective governments.
- Other development associated with housing can be included if it is integral to the housing proposal and proportionate.

It is worth noting however, that the 500-house threshold is set out in Government guidance rather than in legislation, so there is the scope for Government to change this more readily.

DEFINING 'INFRASTRUCTURE-RELATED' HOUSING

To be considered for inclusion and defined as 'infrastructure-related', housing must either be:

- 1) **Functionally needed** by the national infrastructure project, or
- 2) **In geographical proximity** to the project.

There is Government guidance on these definitions, and applicants should be prepared to justify on application why any housing meets the definitions above, and for this to form part of any examination.

Functional need includes housing for construction or operation of the infrastructure project. This housing is not necessarily restricted by proximity but any location would need to be justified.

Geographical proximity means on, next to or close to the site, up to **1 mile** from any part of the integral infrastructure boundary, and justification would also be needed.

Infrastructure-related housing can form part of any type of NSIP so it's not limited to, for example, business and commercial projects. This provides opportunities to integrate housing with transport projects, provide permanent housing for workers for major generating stations or facilitate strategic mixed-use schemes with business or commercial projects.

Annex 2 sets out the broad thresholds for all pre-defined infrastructure projects (refer to the Act for full definitions).

DIRECTIONS INTO THE NSIP PROCESS

Housing can be included in business and commercial applications if it is related to the business and commercial project, rather than an integral part of the project. For example, it could be argued that housing supports the viability of a mixed use scheme whose main purpose is leisure. The Secretary of State will not take housing into account when deciding whether the business and commercial scheme itself should be directed in to the DCO process.

INCLUDING HOUSING AS PART OF A NATIONAL INFRASTRUCTURE PROJECT

Integrating housing considerations into the application from an early stage gives the greatest scope to prepare a robust application. The extent of consultation and the level of detail are two key aspects to consider, as pre-application consultation is an integral part of the DCO process, and the quality and extent of consultation forms one of the Acceptance tests.

Early discussions with local authorities and communities, plus transparent responses to representations are key to establishing the right policy framework, where risks and issues lie and how these can potentially be overcome in the final application.

The Government recognise that much of the detail around housing should be left to discussions with local authorities post consent. It does however, require sufficient detail to determine what is being consented and to assess the impact of the housing. In practice, housing proposals would need to find the right balance between what would traditionally be outline and full planning applications.

Good engagement with consultees, co-ordination with environmental assessment work and clear wording in the draft DCO and supporting documents can help minimise confusion and risk.

The ability to make changes to NSIPs, and any related housing, particularly material changes once an application is submitted, is limited and comes with risk. Applicants should also bear in mind that the examination process enables anyone to register as an interested party and make direct representations to the Examining Inspectors and therefore good pre-application engagement can help understand potential examination issues.

TESTING THE INCLUSION OF HOUSING

The acceptability of housing proposals will almost certainly be tested during any Examination, and Examining Inspectors will have the discretion to determine how to do this as part of the examination into the related NSIP. Normally, decisions are made in accordance with relevant National Policy Statements, however there is no known intention to produce a National Policy Statement for housing so the Examining Authority will need to define what it considers to be the relevant policy framework to inform the decision making process.

This can include anything the Inspector(s) and Secretary of State consider to be "important and relevant" – a legal definition for NSIP decisions akin to material considerations.

Government guidance highlights the importance of up-to-date development plans and the National Planning Policy Framework, and these can be expected to carry significant weight. However, there may also be scope for any evidence that demonstrates the need and suitability of housing in relation to delivery of the infrastructure proposal to be considered important and relevant.

IN CONCLUSION

The NSIP regime remains complex and continues to be tested and tweaked as projects progress through it. As such our best advice is if, having read this Guidance Note, or our others on this topic, you are still unclear as to how the NSIP process might be applied or its relevance to your proposals, please do contact Ben Lewis or Tom Carpen in our Infrastructure Team, who will be more than happy to offer some advice.

¹ Note, temporary worker accommodation can be defined as 'associated development' for which there is no threshold but justification would be needed.



BEN LEWIS
INFRASTRUCTURE
DIRECTOR
02920 660910
ben.lewis@
bartonwillmore.co.uk



TOM CARPEN
PLANNING ASSOCIATE
0117 9299677
tom.carpen@
bartonwillmore.co.uk

ANNEX 1 – SUMMARY OF NSIP THRESHOLDS

See Planning Act 2008 (as amended) sections 15-30 for specific details for each threshold

Field (sector)	Development type	General thresholds (Planning Act 2008 contains more detail)		
		Size	Location	Any other threshold
Energy	Generating stations (onshore)	Construction or extension > 50 MW Construction or extension >350MW	England Wales	
	Generating stations (offshore)	Construction or extension > 100 MW Construction or extension >350MW	England Wales In waters and up to seaward limits of territorial sea or Renewable Energy Zone	
	Electric lines	132KV or above; 2km or more	England and / or Wales Part England - Scotland	Above Ground; caveats apply for <2km
	Underground gas storage	Creating or starting to use at least 43 million standard m ³ or at least 4.5million m ³ max flow rate	England Wales	
	LNG	At least 43 million standard m ³ or at least 4.5million m ³ max flow rate	England	Construction or increase of
	Gas reception facilities	least 4.5million m ³ max flow rate	England	Construction or increase of
	Gas transporter pipelines	>800mm diameter and 400 km; > 7bar gauge; at least 50,000 customers of more than one supplier	England (whole or part)	Or likely significant effect on environment; Gas transporter applicant
	Other pipelines		England and / or Wales Part England - Scotland	Cross country; would have required Pipelines Act 1962 authorisation
Transport	Highways	Construction, alteration ³ or improvement ⁴	England	Secretary or strategic highways company applicant
	Airports	Construction, alteration, increase in permitted use; at least 10 million passengers/year or at least 10,000 cargo movements	England or English Waters	
	Harbour facilities	Container ships - 500,00 TWU Ro-ro ships – 250,000 units Cargo (other) – 5 million units	England or Wales or waters adjacent up to seaward limits of territorial sea	
	Railways	Construction or alteration >2km	England	Approved operator; not operational land or permitted development
	Rail Freight Interchanges	Construction or alteration At least 60 ha At least 4 goods trains / day	England	From and to more than one consignor/ consignee
Water	Dams and reservoirs	Construction or alteration >10 million m ³	England	One or more water undertaker

Field (sector)	Development type	General thresholds (Planning Act 2008 contains more detail)		
		Size	Location	Any other threshold
	Transfer of water resources	>100 million m ³ a year	England	
Waste Water	Waste water treatment plants and transfer / storage of waste water	Construction or alteration Capacity > population of 500,000. Storage / Transfer capacity >350,000 m ³	England	
Waste	Hazardous waste facilities	Landfill/deep storage >30,000 tonnes Other > 30,000 tonnes	England	Final disposal / recovery
	Radioactive waste geological disposal facilities	Depth >200m	England or English waters adjacent up to seaward limits of territorial sea	Final disposal / recovery

¹ Wales will have a separate threshold of >350MW onshore or offshore, but has yet to establish a consenting regime. Projects under that threshold will be devolved to the Welsh Government.

² Definition of sea limits included.

³ For construction and alteration, speed limit 50 mph or greater, and more than 12.5 ha development area.

⁴ For improvement, likely to have a significant effect on the environment.

ANNEX 2 – PRESCRIBED BUSINESS AND COMMERCIAL ACTIVITIES AND THRESHOLDS

Category	Indicative threshold
Office use	No less than 40,000m ² GIA
Research and development of products or processes	No less than 40,000m ² GIA
An industrial process or processes	No less than 40,000m ² GIA
Storage or distribution of goods	No less than 40,000m ² GIA
Conferences	No less than 40,000m ² GIA
Exhibitions	No less than 40,000m ² GIA
Sport	No less than 100 hectares / no less than 40,000 seats for stadia
Leisure	No less than 100 hectares
Tourism	No less than 100 hectares
The winning and working of minerals, not including peat, coal, oil or gas.	Strategically important industrial mineral or over 150 hectares surface or underground area

Further detail - [National Infrastructure Business and Commercial regulations 2013](#) and [Policy statement by Department for Communities and Local Government](#)

**BARTON
WILLMORE**

bartonwillmore.co.uk
GUIDANCE NOTE

OFFICE ADDRESSES

9th Floor
Bank House
8 Cherry Street
Birmingham
B2 5AL
T/ 0121 711 5151
F/ 0121 711 5152

101 Victoria Street
Bristol
BS1 6PU
T/ 0117 929 9677
F/ 0117 929 4569

St Andrews House
St Andrews Road
Cambridge
CB4 1WB
T/ 0122 334 5555
F/ 0122 334 5550

Greyfriars House
Greyfriars Road
Cardiff
CF10 3AL
T/ 0292 066 0910
F/ 0292 066 0911

The Observatory
Southfleet Road
Ebbsfleet
Dartford
Kent
DA10 0DF
T/ 0132 237 4660
F/ 0132 237 4661

Whilst every effort has been made to ensure the accuracy of the information contained within this publication, no warranty, expressed or implied, is given that the information is complete or accurate nor that it is fit for a particular purpose. All such warranties are expressly disclaimed and excluded. Any opinions, recommendations or interpretation provided are not necessarily the current opinions, recommendations or interpretation of the contributors and may be changed at any time.

party shall be liable to a user of this publication or to any third party for any loss or injury arising out of the information or any actions taken or not taken in response to any information or a user's use of (or inability to use) this publication. The recipient is obliged to inform any subsequent recipient of such terms.

68/70
George Street
Edinburgh
EH2 2LR
T/ 0131 220 7777
F/ 0131 220 7778

3rd Floor
14 King Street
Leeds
LS1 2HL
T/ 0113 204 4777
F/ 0113 204 4778

7 Soho Square
London
W1D 3QB
T/ 0207 446 6888
F/ 0207 446 6889

Tower 12
18/22 Bridge Street
Spinningfields
Manchester
M3 3BZ
T/ 0161 817 4900

The Forum
The Pearl
New Bridge Street West
Newcastle
NE1 8AQ
T/ 0191 206 4040

Neither Barton Willmore nor any representative, agent or employee nor any connected company or

This guidance note was printed on paper using fibre sourced from sustainable plantation wood from suppliers who practice sustainable management of forests in line with strict international standards. Pulp used in its manufacture is also Elemental Chlorine Free (ECF).

The Blade
Abbey Square
Reading
RG1 3BE
T/ 0118 943 0000
F/ 0118 943 0001

Suite 43
OVIC
4 Ocean Way
Southampton
SO14 3JZ
T/ 023 8038 1968

ISSUED NOVEMBER 2017