



RTPI

mediation of space · making of place

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Sent by e-mail to: NSIP.Applications@communities.gsi.gov.uk

19 June 2009

Dear Mr Lancaster,

Planning Act 2008: Consultation on the Pre-Application Consultation and Application Procedures for Nationally Significant Infrastructure Projects

The Royal Town Planning Institute (RTPI) is the leading professional body for spatial planners in the United Kingdom. It is a charity with the purpose to develop the art and science of town planning for the benefit of the public as a whole. It has over 22,000 members who serve in Government, Local Government and as advisors in the private sector.

The attached document responds directly to the consultation questions posed in the Department for Communities and Local Government (CLG) consultation on the Pre-Application Consultation and Application Procedures for Nationally Significant Infrastructure Projects (NSIP) under the Planning Act 2008. The response also makes reference to a separate submission prepared jointly by the RTPI and the Institute of Environmental Management and Assessment, submitted through the IEMA.

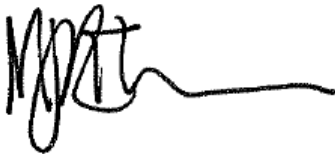
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This response has been formed drawing together internal consultations following a period of web-based engagement in which all members can participate, consultations through our member networks and the outcomes of internal meetings with members.

Representatives of the RTPI have also been involved in workshops run by the Department for Communities and Local Government on the NSIP application process and have had regard to those discussions in preparing this response.

Similarly, we offer the following observations as the basis for further stakeholder discussions with CLG officials, and volunteer our services for that purpose.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'M Thomson', followed by a long horizontal flourish.

Matt Thomson
Head of Policy & Practice

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Regulations on applications and procedure

Consultation question 1: Do you agree with the list of statutory consultees? Are there any others which you feel should be included?

The RTPI generally supports the current list of statutory consultees in Schedule 1, but requests that Planning Aid England, Planning Aid London and Planning Aid Wales (as appropriate) should be added to facilitate their being notified of all proposed infrastructure projects as early as possible to enable adequate preparation for requests for advice from persons affected and for community engagement. (This principle is also suggested by Planning Aid England and Planning Aid London in their joint response, hereafter to be referred to as "Planning Aid".)

On a broader point of principle, the RTPI would advocate that consideration of the range of bodies to be consulted at any stage of decision-making on NSIPs should be influenced by consideration of what constitutes the community of interest. An NSIP is, by definition, nationally important, and needs national consultation. It therefore follows that proposals may have an impact on communities and organisations not directly identified in Schedule 1 who should, nevertheless, be able to be engaged. An appropriate mechanism may be to require that all regional planning bodies and the national agencies in Wales, Scotland and Northern Ireland are statutory consultees for NSIPs. While it may get too burdensome on applicants to further extend this list, there is already a considerable burden imposed through the need to identify how the application may be "likely to affect" certain interests. The RTPI considers that effective publicity of all proposed applications beyond the prescribed consultees could be achieved through the information management system proposed in section five of our joint response with IEMA.

In line with our previous response regarding consultees for National Policy Statements, the RTPI is of the view that the list needs to have some flexibility built in to respond to the changing circumstances of responsible bodies.

The RTPI considers that Schedule 1 is currently confusing to users because columns 3 and 4 are, to all intents and purposes, identical. The reasons for having separate advice on how to consult at pre-application and application stage need to be re-examined.

Furthermore, the RTPI suggests that Schedule 1 may be extended to include reference to those bodies that should be consulted on matters relevant to Environmental Impact Assessment (EIA), should our proposal to merge the Applications and Procedure Regulations with the EIA Regulations be accepted (see our joint response with the IEMA).

Consultation question 2: Do you agree with the set of information we are requiring within the notices to publicise proposed applications and applications that have been accepted by the Commission, and notify prescribed persons of accepted applications? Should anything else be included? Or should anything be omitted, for example on the grounds of being too burdensome?

The RTPI considers that the information required is appropriate, and has not identified any omissions at this stage.

However, the regulations and guidance fail to take the opportunity to require the best use of 21st century technology in order to facilitate and reduce the burden of information sharing through an electronic information management system to which stakeholders in the process would have access – see section five of our joint response with IEMA.

In line with that submission, it may be possible for several requirements for information to be discharged by a single set of data, thereby reducing the burden of information required.

Consultation question 3: Is the information required to be stated on the application form appropriate? If not, what omissions or additions would you make? Are the descriptions in the form's guidance note clear and sufficient?

The RTPI considers that the information required is appropriate. However, in line with our position on making best use of 21st century technology (see section five of our joint response with IEMA), we request that the requirement to submit several paper copies of the application to the commission be removed, and that the default mechanism for submitting applications be electronic.

Consultation question 4: Are there any other plans, documents or information which should be required to accompany the application, including for specific types of infrastructure? Should anything be omitted, for example on the grounds of being too burdensome? Should anything in the existing lists be described in a different way?

The RTPI considers that the information required is appropriate, and has not identified any omissions at this stage.

However, the regulations and guidance fail to take the opportunity to require the best use of 21st century technology in order to facilitate and reduce the burden of information sharing – see section five of our joint response with IEMA.

In line with that submission, it may be possible for several requirements for information to be discharged by a single set of data, thereby reducing the burden of information required.

Consultation question 5: How feasible and appropriate is it for application documents to be made available for consultation, and submitted to the Commission, in electronic formats, in addition to paper copies?

The RTPI considers that it is essential that the opportunity is taken to embed 21st century technology into the practices of the IPC from the very outset. Failure to do so will put the credibility of the IPC as a modern organisation in peril.

In line with our position (see section five of our joint response with IEMA), the RTPI considers that electronic formats should be the default for submission and publication of information, and that paper copies should only be produced for deposit at local consultation points (i.e. libraries and council offices) or on request for persons for whom access to electronic information is difficult; hard copies of documentation would need to be accounted for in the regulations during a transitional phase prior to the implementation of the electronic system.

Consultation question 6: Do you agree that applicants should not be required to re-submit information on the persons and organisations which have been notified of an accepted application?

The RTPI agrees in principle with the intention of reducing the burden of bureaucracy that lies behind this aspect of the regulations. Such an approach will be easier to justify and manage through the application of the information management system proposed in section five of our joint response with IEMA.

Transitional issues

Consultation question 7: Do you agree that consultation exercises which were commenced prior to the entry into force of new standards should benefit from transitional provisions?

The RTPI agrees with this principle of the regulations, but considers that the regulations/guidance must provide clarity on how applicants should demonstrate that previous consultations have met a sufficient standard, i.e. be within the realms of accepted good practice, and, specifically, to identify when a consultation has either not been effective or in line with good practice.

The RTPI also considers, in common with Planning Aid, that regulations/guidance should specify that documents required to be produced in support of all key stages of the process should include a report setting out the outcomes of consultations undertaken prior to that stage.

Consultation question 8: Do you agree that transitional provisions should be made, that could, in the circumstances described, deem a consultation exercise commenced prior to October 2009 to have met the new requirements?

The RTPI agrees with this principle, and notes that, similarly, these provisions also determine when a previous consultation exercise does not meet the new requirements.

Consultation question 9: Do you agree with the proposed tests which the consultation exercise must meet before being deemed to meet the new requirements?

The RTPI agrees with the tests as proposed, but suggests consideration of the following principle for inclusion in the regulations.

Where a consultation is deemed by these general tests not to have met the new requirements, there could be a mechanism, where deemed expedient, under which the applicant could apply to the IPC for a direction on whether there are circumstances specific to the consultation or application that might render the consultation sufficient. If the Commission determined that the consultation was not sufficient, it could choose to direct the applicant as to action to be taken, which could be a complete re-working of the consultation, or a partial or top-up exercise.

Consultation question 10: Is there anything else on which you would like to comment?

The RTPI has no comments at this stage additional to those made above and in its joint response with the IEMA, but reserves its right to comment further in future engagements on this matter.

Guidance on pre-application consultation

Consultation question 11: Are the principles outlined in the guidance clear, if not please give your views as to how this can be improved?

Consultation question 12: Has everything been covered that needs to be covered, if not please explain what other information you think should be included?

Consultation question 13: Do you have any other views about this guidance?

The RTPI considers that the guidance is far from clear.

A key problem is that the guidance is specifically about consultation. This is largely meaningless in the absence of guidance on the rest of the pre-application procedures (which should also include EIA).

In particular, the guidance gives excessive unnecessary attention to the importance of consultation generally, rather than focusing on how consultation should be undertaken, and, critically, without giving a clear indication of what stages of the process involve consultation, and how this can be integrated with EIA processes.

An approach to the guidance which included timeline/workflow diagrams and frequently-asked questions would be beneficial.

The guidance also assumes a largely paper-based system of information production and consultation management, which is not consistent with best practice in the 21st century. The RTPI further considers that the guidance should itself be published in the form of a “live” document online, similar in form to the Planning Advisory Service’s Plan-Making Manual.

Further detail on these matters is provided in the RTPI’s joint response with the IEMA.

Model provisions and the Planning Act

Consultation Question 14: Do you agree that separate sets of model provisions should be made for each infrastructure type, in the final statutory instrument?

The RTPI considers that model provisions such as these are an essential part of the toolkit for the efficient undertaking of NSIP applications. However, the Institute suggests that the appropriate vehicle for providing model provisions is through guidance, rather than regulations, as part of a living set of best practice examples.

Experience of other regimes, including the use of conditions in planning permissions, suggests that such provisions would evolve rapidly over time as issues with wording or other impacts are revealed and circumstances change. Putting model provisions in guidance, managed by the IPC, would enable them to be regularly updated.

Applicants (and other interested parties) would be at liberty to devise their own provisions to suit circumstances, and the IPC would be able to question why their model provision were not used, and direct their use if deemed appropriate.

Such a system may not be as powerful, in terms of having the legitimacy of secondary legislation, but would be more useful, flexible and expedient.

The RTPI considers that such an approach would be consistent with the need, identified by Kate Barker and others, to reduce delays and bureaucracy in the planning system that arose from the over-regulation that followed the 2004 Act.

Consultation question 15: Do the draft model provisions capture all the types of provision which are needed for energy, highways and water projects? If not, what additional provisions may be needed?

Consultation question 16: Do you agree that specific model provisions are necessary for types of NSIP infrastructure other than railways and harbours? If the answer to the previous question is yes, what types of development, associated development or ancillary matters should be covered by model provisions?

Consultation question 17: What other comments do you have about the draft model provisions, and in particular what additions would need to be made in order to cover common types of development, associated development or ancillary matters needed for NSIPs?

The RTPI is not positioned to determine whether the model provisions would cover all relevant issues. However, with the system suggested under Q14, there would be a mechanism for expediently updating the model provisions to meet changing needs without the need for reform of regulations.

Regulations on Environmental Impact Assessment

Consultation question 18: These regulations transpose into secondary legislation the requirements of the Directive, consequently there are established principles to which we must adhere, however it would be helpful to have your views as to whether there appear to be any omissions?

Consultation question 19: Regulations 5 and 6 of the EIA Regulations provide for screening and scoping opinions respectively. These regulations also allow the Commission to ask for further information from the person requesting the opinion. The regulations do not specify a time limit within which the Commission's request must be complied. Do you think such a time limit should be provided and if so what should the time limit be?

Consultation question 20: If the Commission grants a development consent order it may also include requirements within that order. The EIA regulations do not currently provide for the means of ensuring that where necessary those requirements are subject to an EIA. It will be necessary to provide for this and your views are invited as to how this can best be achieved.

Consultation question 21: Do you agree that the approach we propose to take with the two Schedules is the correct approach?

Consultation question 22: Is there anything else on which you would like to comment?

Please see the joint RTPI/IEMA response, which covers the issues raised by Q18-22.

Planning Act 2008 and the Habitats Directive (92/43/EEC)

Consultation question 23: Do you agree with the scope of the draft proposed changes. If not, what changes should be made to its scope, and why?

Consultation question 24: Is there anything else on which you would like to comment?

The RTPI are not best positioned to comment on the detail of the proposed changes to the Habitat Regulations. The Institute notes that, in this case, the benefits of having a single set of regulations applying the Habitats Directive to a wide range of consent regimes through the various Conservation Regulations outweighs the benefits of unifying Habitats Regulations with the regulations governing NSIP procedures, as we have advocated for EIA procedures.

However, the RTPI considers it essential that the NSIP pre-application guidance makes explicit reference to the need for Appropriate Assessment under the Habitats Directive, and integrates this into the timeline for pre-application procedures. The guidance must include clear advice on the necessary actions to be taken in this regard alongside the procedures for pre-application consultation and EIA as set out elsewhere in this response and our joint response with the IEMA.

Guidance on associated development

Consultation question 25: Are the principles outlined in the guidance clear, if not please give your views as to how this can be improved?

Consultation question 26: Has everything been covered that needs to be covered, if not please explain what other information you think should be included?

Consultation question 27: Do you have any other views about this guidance?

The RTPI supports the principles of this guidance and notes that the guidance is succinct and generally clear, with the exception of the following issues.

Curtilage: Several provisions within the guidance use the term “curtilage” to define an “associated development” type. Experience with implementing both planning and historic buildings legislation suggests that this term is particularly problematic, and it is suggested that either a different factor is used, or the term curtilage is specifically and carefully defined within the context of the guidance.

Relationship of the “associated development” to the main proposal: The RTPI considers that the guidance is not clear as to whether it would be expected that “associated development” is physically part of the NSIP site, and if not, how the separation of uses is to be addressed. The principles of associated development given in section 220 set out the need for a clear and demonstrated functional relationship between an NSIP and its associated development. However, the further from the main site an associated function is located, the greater the case for the primacy of local development plan policy.

A key principle of siting NSIPs should be that the main development site should, generally, be capable of accommodating the whole NSIP and all associated functions, and that separate sites, where necessary, must be identified at the same time as the main application, and must not prejudice the implementation of the planning strategy for the area.

Retail and similar uses as “associated development”: There are, however, significant potential impacts on the “normal” planning of an area that could arise from the provision of, for example, retail, hotel or leisure development as “associated development” alongside transport hubs such as airports and railway stations.

For this reason, the definitions and principles given in the guidance (section 220, including footnote 18) need to be more tightly defined, and the mechanisms for dealing with related non-NSIP development that is not “associated development” described more fully.

The potential adverse impacts that the RTPI has identified relate to the impact on the planning strategy of an area of the provision of certain uses, particularly retail, but also hotel and leisure development. Such uses are often provided alongside transport hubs, including airports and railway stations. Similar impacts on the proper planning of an area could arise from other uses in association with other types of infrastructure.

The RTPI seeks clarification as to:

- whether this guidance is intended to define retail, hotel and leisure uses within an airport or station as being “an integral part of the NSIP” (last para of section 220), or, where the NSIP is a railway, whether such uses are considered as an integral part of a station, or “improvements” to it; and
- how this might relate to the provision (in footnote 18) about development that is “only necessary as a source of additional revenue” not falling within the definition of “associated development” – while retail, hotel and leisure uses are clearly a source of revenue, especially in airports, they are not only for revenue purposes, since they also provide services for the comfort and convenience of passengers, which might be argued to be within the core purpose of the NSIP.

There is a question as to the extent to which such uses could be considered either as “associated development” or as an integral part of the NSIP if they are only accessible to existing users of the development – which might be the case, for example, for such uses beyond the security checkpoints at airports. Care needs to be taken, however, to ensure that such uses cannot be considered “associated” in developments where access is not as rigorously controlled, including railway stations, to avoid retail developers using co-location with a railway station as a means to avoid following local development plan strategies and the policies of (current) PPS6. (Simply restricting access to ticket-holders will not be sufficient because (a) potential customers could purchase the lowest price travel ticket and, possibly, have this refunded by the store on making a purchase, and (b) barrier controls at the station could be changed without recourse to planning controls.)

It is reasonable to assume that, if retail, hotel and leisure uses at airports and railway stations are not considered “associated development” or an integral part of the NSIP, then applicants will come forward with proposals that include “blank” space for possible future retail etc. use that would be subject to a later planning application to the local authority. The IPC would have no jurisdiction over the consideration of such blank space (which might include buildings to which no particular use is ascribed in the NSIP application), and would, presumably, be obligated to issue a development consent order, subject to the blank space having no adverse impact on matters before the IPC. This would beg the question of how a local planning authority could reasonably be expected to consider the later proposal, all of the infrastructure for which would have been provided, and which might be more available and deliverable than locations it would prefer to develop under its planning strategy.

For the above reasons, the RTPI considers that, where an NSIP proposal would be expected to include retail, hotel, leisure or other uses that could have an impact on the proper planning of an

area, then, whether these uses are considered to be “associated” or not, the IPC should be tasked with considering the entire proposal holistically, with the policies of the development plan having primacy (with regard to the associated/related uses) and the LPA as a statutory consultee.