

# Stonehenge Alliance

November 2018

## Nationally Significant Infrastructure Projects: An Overview

### The 2008 Planning Act

Under the Planning Act 2008 a separate system was set up for Nationally Significant Infrastructure Projects (often shortened to “NSIPs”). Its purpose was to speed up decisions and give developers more certainty.

It is a radical departure from the Town and Country planning system. It curtails the rights of the public to take part and be heard and compresses the decision-making process into a set timescale laid down in the act and regulations.

### What is an NSIP?

These are defined in the 2008 Planning Act and subsequent regulations. They are projects like large scale transport developments – Roads (promoted by Highways England), Railways, Harbours; power stations; transmission lines and pipelines; gas storage and transport; and others. Some are subject to size thresholds e.g. for a power station it is over 50 MW.

### How does the process differ?

| <b>Town and Country Planning</b>                             | <b>Major Infrastructure Planning</b>                                                                                                                                                                      |
|--------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Town and Country Planning Acts                               | Planning Act 2008                                                                                                                                                                                         |
| Pre-application consultation not usually required            | Statutory requirement for developer to consult before the application is made. The consultation is run and paid for by the developer.                                                                     |
| Developer applies to local council for planning permission   | Developer applies to Planning Inspectorate ( <b>National Infrastructure Planning</b> ) for a <b>Development Consent Order</b>                                                                             |
| Council runs a consultation                                  | Inspectorate decides whether or not to accept the application (on process, not merit)                                                                                                                     |
| Set time for comments and objections                         | Set time for comments and objections                                                                                                                                                                      |
| Council decides application within time limit                | Planning Inspectorate holds <b>Examination</b> with 6 month time limit. No right to take part if you have not registered. Limited right to be heard. No right to bring expert witnesses or cross-examine. |
| Application is tested against Local Plan and NPPF            | Application is tested against <b>National Policy Statement</b> which you can't challenge. Can be overruled by site-specific considerations “where adverse impacts outweigh benefits”                      |
| If refused, developer can appeal                             | Planning Inspectorate ( <b>Examining Authority</b> ) has three months to make recommendation                                                                                                              |
| Planning Inspectorate holds written appeal or public inquiry | Relevant Secretary of State decides (depending on the project – eg for a road it will be the SoS for Transport)                                                                                           |
| Minister decides                                             | Option of Judicial Review                                                                                                                                                                                 |
| Option of Judicial Review                                    |                                                                                                                                                                                                           |

The 2008 Planning Act generally removes the right to question the need for a project. This is assumed to have been established by Ministers (subject to Parliamentary scrutiny) in a series of National Policy Statements (NPS). The purpose of the examination procedure is to determine whether or not the various provisions in the NPS have been correctly applied. Projects can be rejected if the examiners – and ultimately the Secretary of State – consider that the local adverse impacts outweigh the benefits. This does not often happen! Around 94% of projects that are accepted for examination by the Planning Inspectorate [succeed](#) in gaining a Development Consent Order.

### **Who examines the application?**

The Planning Inspectorate appoint a panel – one, two, three or exceptionally more qualified planning professionals. Collectively they are known as the **Examining Authority**.

The Examining Authority may be assisted by an appointed **expert assessor** where an application raises issues of a specialist nature which are beyond the normal remit of a planning professional (knowledge of the World Heritage Convention for example?)

The Examining Authority conducts the examination throughout, writes a report and makes a recommendation to the Secretary of State. The final decision rests with the Secretary of State.

### **How do the local planning system and the local authority fit in?**

These are relegated to a lower status. If there's a conflict with local plan then this can be considered as a factor against the project, but the Secretary of State is likely to give more weight to the National Policy Statement.

The local authority will be formally consulted and asked to input at various stages. They will be asked if they think local consultation has been adequate. For the project itself they have the opportunity to submit a Local Impact Report. It's worth liaising with the local authority planning officers or others (such as ecologists) but bear in mind that because the local authority does not take the decision they may not give very high priority to getting involved in a NSIP in their area.

### **How do I get Involved?**

It pays to get involved at the pre-application stage so that you get familiar with the details of the project and can start working out where the various players stand. You can use the consultation to push for alternative options that you think the developers should consider. If you consider that the developers are not consulting properly (e.g. the information is inadequate or the consultation is poorly publicised) then you can complain, but only to the developer – the Planning Inspectorate won't get involved at this stage.

You should keep track of the project on the [Planning Inspectorate website](#), and you can ask to receive email updates from them as the project progresses (note that this is NOT the same as registering as an interested party – see below)

The key time to get involved is after the application for a Development Consent Order (DCO) is formally submitted.

After this the process runs to a strict timetable.

The Planning Inspectorate have a set period of 28 days in which they have to decide whether or not to accept the application for examination. This is not a decision on the merits of the project; it is just a matter of whether or not the applicants have followed the process correctly, provided all the correct information etc.

Once the project is accepted then all the relevant documents have to be published by the developer. They can do this when the application is submitted for acceptance but they do not have to. In the case of the A303 Stonehenge the Inspectorate have already [published the application documents](#) on the Planning Inspectorate website – all 301 of them.

Shortly after acceptance, the Planning Inspectorate will open the application for registration as an interested party.

### **Registration.**

If you want to take part in any of the subsequent stages, you must register. If you don't, you lose your right to submit further evidence or participate in the examination.

Registration is not difficult, but you have to do it within the set deadline and on the official form. You can complete the form online or request one through the post – but you can't download it or make your own copies. The regulations specify that the registration period must run for a minimum of 28 (sometimes 30) days. The Planning Inspectorate usually allow around 5 – 6 weeks.

To register you need only provide your contact details and a written submission – called a “**Relevant Representation**” – which you are asked to keep to no more than 500 words.

You have only space to outline your arguments, but it's important that you highlight your main concerns. This is because the Examining Authority calls the shots – they decide what matters are to be scrutinised and what questions are to be asked. If you haven't set out your concerns clearly then they may not get an airing in the examination.

If you question the merits of the relevant NPS then you won't get much further because this is off-limits as far as the examination is concerned. Otherwise your registration has to be accepted so long as it is not “frivolous” or “vexatious”.

### **The Preliminary Meeting**

After the registration period is over, there will be further communication to announce who will make up the Examining Authority, a timetable, and an invitation to a Preliminary Meeting.

The **Preliminary Meeting** is an important stage because it's here that the Examining Authority sets out how they're going to carry out the examination. You can ask them to make sure that hearings are held at accessible locations and times, and to include certain key issues.

### **The Examination**

This begins the day after the Preliminary Meeting and has to be finished within a statutory 6 month period.

It's carried out mostly by exchange of **written representations**. The Examining Authority lays out the questions, you respond and so do the applicant and everyone else who wants to so long as they have registered. The Examining Authority sets a series of deadlines for responding to the questions, responding to other parties' responses, responding to the next round of written questions, and so on. The overall plan is to narrow down the subject matter of the examination as it proceeds.

The Examining Authority will also set dates for a sequence of **issue specific hearings**. In these sessions evidence is given orally. You have the right to attend, but not to bring expert witnesses to give evidence or to cross-examine witnesses for the other side. You can request these but it is at the Examining Authority's discretion whether you can do or not. The hearings consist for the most part of the Examining Authority asking questions of participants. A smart move for influencing the proceedings is to get them to ask the right questions.

There are also **open floor hearings** which are an important concession to the public's right to participate. Anyone who has registered is entitled to take part. But you may have to submit a written statement in advance which the panel may question you on.

### **Decision stage**

After 6 months the examination closes. The Examining Authority then has three months to report and make a recommendation to the Secretary of State. The report is not made public at this stage.

After a further three months, the Secretary of State must make a decision and publish the report. (Exceptionally the Secretary of State may give him or herself permission to extend this deadline).

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I have done my best to ensure the accuracy of this briefing, my apologies for any errors. Please bring them to my attention if you see them and I will amend.

### **LEGISLATION AND GUIDANCE**

There is a lot of helpful [guidance](#) on the Planning Inspectorate website – [this video](#) is a useful and illuminating guide to the process

See also [Advice Note 8](#) for an overview of the process

[Planning Act 2008: examination of applications for development consent](#)

[The Infrastructure Planning \(Examination Procedure\) Rules 2010](#)

[Planning Act 2008](#)

[National Networks National Policy Statement](#)

### **JARGON EXPLAINED**

NSIP – a Nationally Significant Infrastructure Project

PINS – the Planning Inspectorate

DCO – Development Consent Order

NPS – National Policy Statement

EA – the Examining Authority

### **INSPIRATION**

The developer does not always win! See [“Extinguished”](#) – short video about the successful campaign to defeat a proposed incinerator near Merthyr Tydfil.

## SAMPLE TIMELINE

As an indication of the possible timelines for the Stonehenge A303 examination, here's a simplified timeline for a project that has completed its examination – the [Silvertown road tunnel](#), promoted by Transport for London. Several details have been left out for clarity, including hearings and submissions relating to compulsory purchase.

| Date              | Stage in process                                                                                                                                                       |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3 May 2016        | <b>Application received</b> by the Planning Inspectorate                                                                                                               |
| 31 May 2016       | <b>Accepted</b> for examination                                                                                                                                        |
| 13 July 2016      | <b>Registration</b> of interested parties begins                                                                                                                       |
| 31 August 2016    | Registration of interested parties closes                                                                                                                              |
| 06 September 2016 | <b>Relevant representations published</b> on the website                                                                                                               |
| 13 September 2016 | Notification of Preliminary Meeting, draft Examination Timetable and Initial Assessment of Principal Issues published                                                  |
| 05 October 2016   | Agendas for the <b>Issue Specific Hearing</b> on the Draft Development Consent Order and <b>Open Floor Hearings</b> published                                          |
| 11 October 2016   | <b>Preliminary Meeting</b> takes place; Examination begins                                                                                                             |
| 18 October 2016   | Examination timetable, First Written Questions, Notification of hearings and Accompanied Site Inspection (ASI) sent                                                    |
| 15 November 2016  | <b>Deadline 1 for:</b> Written representations; comments on Relevant Representations; responses to Examining Authority's First Written Questions; Local Impact Reports |
| 06 December 2016  | <b>Accompanied Site Inspection; Issue Specific Hearing</b> on Traffic/Transport Modelling                                                                              |
| 14 December 2016  | <b>Deadline 2 for:</b> Comments on Written Responses; Comments on Local Impact Reports; Comments on responses to First Written Questions                               |
| 17 January 2017   | <b>Issue Specific Hearing</b> on Traffic/Transport Modelling, Forecasting and User Charging and Economic Issues                                                        |
| 18 January 2017   | <b>Issue Specific Hearing</b> on Air Quality, Noise, Other Environmental Issues                                                                                        |
| 19 January 2017   | <b>Issue Specific Hearing</b> on the draft Development Consent Order                                                                                                   |
| 27 January 2017   | <b>Deadline 3 for:</b> Post-hearing submissions including written submissions of oral case;                                                                            |
| 10 February 2017  | <b>Second Written Questions</b> , and notification of further hearings issued                                                                                          |
| 06 March 2017     | <b>Deadline 4 for:</b> Responses to Second Written Questions                                                                                                           |
| 20 March 2017     | <b>Deadline 5 for:</b> Comments on responses to Second Written Questions. Report on the Implications for European Sites published                                      |
| 28 March 2017     | <b>Issue Specific Hearing</b> on any other outstanding issues including Environmental Matters; <b>Open Floor Hearing</b>                                               |
| 29 March 2017     | <b>Issue Specific Hearing</b> on the draft Development Consent Order, and Other Matters of Legal Drafting                                                              |
| 05 April 2017     | <b>Deadline 6 for:</b> Comments on the Report on the Implications for European Sites                                                                                   |
| 11 April 2017     | <b>Examination closed</b>                                                                                                                                              |

## CRYSTAL BALL

If the examination for the A303 at Stonehenge proceeds on a similar timeline to other projects, then we can anticipate the key dates roughly as follows:

| <b>Date</b>                                  | <b>Stage in process</b>                                                                                                                                                |
|----------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 19 October 2018                              | <b>Application received</b> by the Planning Inspectorate                                                                                                               |
| 16 November 2018                             | <b>Accepted</b> for examination                                                                                                                                        |
| Mid-November -<br>late December              | <b>Registration</b> of interested parties <b>begins</b>                                                                                                                |
| Late December<br>2018 – late January<br>2019 | Registration of interested parties <b>closes</b>                                                                                                                       |
| Early January –<br>early February 2019       | <b>Relevant representations published</b> on the website, draft examination timetable issued                                                                           |
| Early Feb – early<br>March 2019              | <b>Preliminary Meeting</b> takes place; Examination begins                                                                                                             |
| Early Feb – early<br>March through to        | <b>Examination</b> process including questions, written representations, comments on these, Accompanied Site Inspection, Issue Specific Hearings, Open Floor Hearings. |
| August – September<br>2019                   | <b>Examination closes</b>                                                                                                                                              |
| February – March<br>2020                     | <b>Secretary of State’s decision</b>                                                                                                                                   |