

National Infrastructure Assessment: Call for Evidence

Response to Question 10: What changes could be made to the planning system and infrastructure governance arrangements to ensure infrastructure is delivered as efficiently as possible and on time?

NIPA: National Infrastructure Planning Association

1. The National Infrastructure Planning Association (NIPA) was launched in November 2010 with the aim of bringing together individuals and organisations involved in the planning and authorisation of major infrastructure projects. Our principal focus is the planning and authorisation regime for nationally significant infrastructure projects introduced by the Planning Act 2008.
2. NIPA was created to develop and disseminate learning and best practice for both promoters and those affected by proposed projects. Our membership of around 500 provides a forum for those with an interest in the planning and authorisation of national infrastructure projects in the UK, particularly those brought forward within the framework of the Planning Act 2008. In summary, we:
 - advocate and promote an effective, accountable, efficient, fair and inclusive system for the planning and authorisation of national infrastructure projects and act as a single voice for those involved in national infrastructure planning and authorisation;
 - participate in debate on the practice and future of national infrastructure planning and act as a consultee on proposed changes to national infrastructure planning and authorisation regimes and other relevant consultations; and
 - improve knowledge, skills, understanding and engagement and so provide learning and education opportunities on national infrastructure planning, develop, share and champion best practice in national infrastructure planning.
3. The efficiency of delivering projects through the planning process, and the effectiveness of subsequent project delivery is therefore of particular interest to NIPA.

NIPA Insights Research Project

4. In February 2016, discussion amongst NIPA Members indicated that there was a concern amongst many stakeholders in the Planning Act regime about:
 - the level of detail which some major infrastructure projects were being asked to assess and then be scrutinised against at examination, as well as
 - the limits on flexibility in the specification for some major infrastructure projects within the resulting Development Consent Order.
5. As a result, NIPA prepared a brief for a research project to look at these issues, and instructed UCL Bartlett School of Planning as the research team. The title of the research study which was launched in August 2016 was: **Does the Planning Act process deliver the certainty and flexibility necessary to attract investment, permit innovation during the design and construction process, and support cost effective infrastructure delivery – whilst providing appropriate protection for**

affected landowners and communities?

6. **Context:** The context for the study is the creation of the Planning Act Regime in 2008. This was a reaction to the long and tortuous processes for consenting major infrastructure projects, epitomised by the Heathrow Terminal 5 Public Inquiry. The Planning Act created a regime for the examination and approval of major infrastructure projects, with a system of National Policy Statements providing national policy backing for the need case, and strict timescales for the examination and determination of each project.
7. The primary trade off required to achieve this time bound process relates to the pre-application process, and the need to ensure that the proposal being put forward for acceptance was complete and unlikely to need to change during the examination and determination processes. This requirement has led to a significant increase in pre-application timescales and costs.
8. The regime has been amended and updated several times over the intervening years, but the essential structure of the process has remained intact. There has been some recognition that some changes are inevitably necessary during the examination process in more recent changes to the regime, and this has been facilitated by the transition of oversight for the regime from the independent Infrastructure Planning Commission, to the Planning Inspectorate with the final decision being made by the relevant Secretary of State.
9. However, there is a perception amongst many stakeholders that the level of detail which is required during the preparation of the application, and which is required to be scrutinised during the decision-making process, has continued to increase. Many participants in the DCO process have highlighted this as an issue of concern, for a range of reasons, for example:
 - The sheer cost of preparing a detailed design for a scheme before it secures an in-principle consent;
 - Highly complex, technically dense and long documents being prepared which are costly, and impenetrable by the lay person wishing to engage with the process;
 - A focus on detail at examination which does little to improve the quality of decision making, or in the event of a consent, the quality of the resulting project;
 - Highly constrained requirements and S106 obligations tend to over complicate the process of discharge of requirements/ obligations for both promoter and regulator; and
 - Over specified projects tend to restrict innovation and technological development during the design and construction process, limiting future opportunities for reducing costs, and improving environmental and community protection in the final project.
10. **The Project:** The membership of NIPA is drawn from a wide spectrum of stakeholders in the DCO process, but is very aware that the views expressed above may not represent those of the wider stakeholder group. The NIPA Insights Research project therefore set out to take an academic-led research approach with the following objectives:
 - To collate evidence and industry views about the **issues** – identified as being the level of detail required in assessment, application, examination and consent of/for national infrastructure projects; versus the **impacts** - of current practice on the quality of the process

for all stakeholders, the impact of current practice on the quality of decision-making, and on the quality of resultant schemes, including their delivery.

- To objectively identify the principal issues and impacts based on evidence and industry views, based on a strong cross industry conversation about this issue;
- To identify practical recommendations which can support a move towards an optimum balance between detail, flexibility, process, decision-making and project outcomes for the planning and authorisation of national infrastructure projects;

11. The issues of detail vs flexibility in the planning and authorisation of national infrastructure projects are relevant to many of the existing authorisation procedures in the UK. However, for the purposes of this piece of work, the focus is on the planning and authorisation of national infrastructure projects through the Planning Act process.

12. **Approach:** The approach adopted to NIPA's research has been as follows:

- **Stage 1A:** Desktop review of the issues to determine current policy and practice. Issues to include level of detail in EIA and DCO application generally, examination practice, and in the DCO itself; and impacts for the project in terms of flexibility, scope for innovation, cost, construction and operational effects.
- **Stage 1B:** Consultation with stakeholders based on an interview and focus group proforma approach, to determine their experiences and consequences for projects of which they have experience. Stakeholders included Government Departments, Promoters, Advisers, Contractors, Local Authorities, Statutory Consultees, and Community Representatives.
- **Preliminary Report** on the principal issues and impacts, (eg social & economic effects, skills and capacity within each stakeholder group, as well as risk, cost and programme for project outcomes), arising from the desktop review and stakeholder consultation. Consideration also given to any differences between industry sectors within the scope of Nationally Significant Infrastructure Projects as defined in the Planning Act, including commercial and business schemes.
- **Stage 2:** Engagement with stakeholders about the findings of the Preliminary Report, including the principal issues and impacts identified and preliminary recommendations. This will include meetings with Statutory Consultees, Promoters, Practitioners and with DCLG and PINS explore opportunities and constraints to future changes in policy or practice, and potential changes which could lead to a more optimal balance between detail, flexibility and project outcomes.
- **Final Report** to summarise evidence to investigate and inform principal issues and impacts identified, summarise stakeholder views following consultation, and identify recommendations aimed at achieving an optimum balance between detail, flexibility, process, decision-making and project outcomes.

13. **The study has now reached the halfway point, with the production of the Preliminary Report. This response provides a summary of the preliminary findings and recommendations.**

Preliminary Findings

14. As this study has progressed, responses from stakeholders have suggested that the critical focus of this work should be to identify ways in which the Planning Act process, on which the delivery of much national infrastructure will depend, can produce projects **which optimise the balance between detail and flexibility so as to define major infrastructure projects that can be delivered cost effectively and efficiently**, whilst continuing to meet their social, environmental and economic objectives, and protect the interests of interested stakeholders and communities.
15. The study has found that most participants in the Planning Act process believe that it is generally operating effectively, and that the incremental improvements made to the process over the years have been beneficial. However, the study has also uncovered a range of evidence about unnecessary detail being considered during the planning stages of projects, and about project flexibility being constrained through Development Consent Orders, both leading to inefficiencies and additional cost in delivering major infrastructure projects.
16. **Detail of Assessment:** There seem to be a wide range of reasons for detail being assessed and specified too early during the Planning Act process, and that this is driven by a range of different actors involved, including promoters, local communities, local authorities, statutory consultees, and examining authorities. Our research suggests that some of the drivers of detail include:
 - perceptions and requirements of environmental regulation and requirements for assessment;
 - provision for the rights of affected landowners through the process of compulsory purchase;
 - a desire amongst local stakeholders, communities and statutory consultees to understand more about the impacts of the proposed scheme or its construction; and
 - a risk averse approach by promoters, their advisors and examining authorities to increase the robustness of consents, often as a result of risk of Judicial Review.
17. Conversely, there is also evidence that there are circumstances when detail of assessment and consent are perfectly reasonable, particularly when there are particularly constrained sites, or issues of important environmental sensitivity.
18. **Flexibility of Consent:** There is also a wide range of reasons why flexibility appears to be constrained within Development Consent Orders, including:
 - A perceived need to understand the nature of a scheme to provide greater certainty to local communities about the design and future operation of a scheme;
 - A perceived need to understand the impacts of a scheme to ensure that local communities, local authorities, and statutory consultees understand the nature of the mitigation requirements;
 - a lack of confidence from local communities, local authorities and statutory consultees about the processes that will follow to refine the detail during the implementation process;
 - a lack of knowledge about the construction techniques available, particularly amongst those

stakeholders who are not regularly engaged in the process; and

- a perceived need to tie down compulsory purchase requirements, and therefore provide greater certainty for land owners.

19. However, the need for greater flexibility in project design and consent arises for a range of different reasons, and this is dependent on project type, sector, and location, for example to:

- provide for future changes that might take place because of uncertainty about future construction methodology;
- allow for alternative scheme options that might be required by regulators, project funders or investors;
- to accommodate potential technological change over very long delivery periods; and
- to avoid time-consuming and expensive post consent changes to Development Consent Orders.

20. Conversely, some projects are achieving a good level of flexibility in their Development Consent Orders, and there is evidence that this can also lead to better outcomes for landowners, local authorities, local communities, statutory consultees and the environment. The attainment of this flexibility does – reasonably – need to be assessed in order to be able to define a wider envelope in which the project can be progressed, but this seems to be an accepted consequence of seeking greater flexibility for project delivery.

21. There is, however, a risk that too much flexibility can make schemes harder to assess, and provide mitigation for, as well as creating a risk of slowing down implementation because of the complexity of providing the level of flexibility sought, and delivering it through project development and discharge of requirements. A balance therefore has to be sought.

Towards Some Preliminary Recommendations

22. As discussed above, this study suggests that there are reasonable reasons for seeking flexibility in Development Consent Orders, and that it is reasonable for this to be justified and judged on a ‘case by case’ basis, with an appropriate level of detail being required to test a range of potential options and identify the reasonable worst case. Evidence suggests that this is well understood and accepted by some, and that this is necessary to ensure that the needs of efficient and effective project delivery is balanced against the need to protect the interests of landowners, communities and the environment.

23. However, the risk of Judicial Review and the need for certainty is a key driver for many, and the criticality of achieving a consent often creates perverse incentives in the system. **Achieving a Development Consent has therefore, for many, become an end in itself, and this can reduce the focus on what is needed to deliver the project effectively.** This is not good for efficient and effective project delivery.

24. The wide range of evidence considered in this study so far suggests that there is no ‘one size fits all’ solution to this issue. However, there seems to be an opportunity to refocus the planning process to include greater consideration of deliverability issues, and the flexibility and detail

required to deliver this through into the project delivery phase.

25. The preliminary recommendations therefore seek to put the Planning Act process in the wider context of project delivery by establishing a **greater focus on the need for project delivery all the way through the planning, design, engagement and consenting processes**. A range of small changes in process or behaviour, by all actors in the regime, are proposed. Together, these changes are aimed at increasing the confidence in creating project flexibility through the Development Consent, and that this can take place satisfactorily alongside the need to project the interests of stakeholders. Four broad areas for recommendations have been identified.
26. **Legislation, Policy and Guidance:** There would appear to be an opportunity to address the issues of detail, flexibility and deliverability in the drafting of National Policy Statements. Many of the current NPSs are approaching the time at which they will need to be updated, and this could be addressed through this process, perhaps with the National Infrastructure Commission taking a role of providing evidence about any particular sectoral requirements.
27. There is also the potential to address these issues more cohesively through guidance. The issues of detail, flexibility and deliverability are dealt with patchily across current DCLG guidance and PINSAdvice Notes, and there may be benefit of drawing this together into one place to establish greater focus on these issues through the DCO process.
28. There have been many consultees to this work who have suggested that the current process for non-material amendments could usefully have a statutory timescale. Current experience suggests that there is a risk that this process can take a long time, and be very costly in terms of delays during the design and delivery process, and this creates a perverse incentive in the system to avoid the process altogether, and accept avoidable cost increases on the project. A more user friendly resolution to non-material amendments would, it is suggested, avoid this.
29. **The DCO Application, Examination and Consent:** Often, the issue is seen as being about how to create an appropriate level of flexibility in the Development Consent Order. However, there are a number of examples of flexibility being provided within an Order; of greater relevance therefore are the stages of the process leading up to the approval of the Order which have a defining influence on how it is drafted, and the process thereafter leading towards implementation. It is therefore important that any recommendations flowing from this work considers all aspects of the process of the planning process.
30. A point often raised is the extensive nature of application documentation, covering a range of assessments and evidence of engagement. This study suggests that it is hard to get away from this because of the large scale and complex nature of many of the projects, although there is no doubt scope for clearer, more consider reporting and accessibility to be provided. Our research supports the view that many of the tools and techniques required to deliver more cost effective, deliverable major infrastructure projects are already available, but that these are not employed consistently across the industry.
31. The question raised therefore is whether or not the engagement, assessment and examination of projects can address these issues more directly, demonstrating how the need for flexibility and detail has been resolved through engagement, design development and assessment of the project, addressing the need for effective and efficient delivery, as well as protection of the interests of local communities and the environment.

32. Where the need for resolution of detail is not required at the DCO stage, and it is possible to make provision for decisions to be taken at later project stages, the study finds that there is a differing range of practice in the drafting of DCOs. The study has identified that it is possible for provision to be reasonably made through discharge of requirements to resolve matters of detail, **and** for this to be good for project promoters, local authorities, land owners and affected communities alike. Greater consistency and awareness of alternative mechanisms to achieve this, and the benefits this can lead to, is considered necessary.

Project Management and Delivery

33. There is evidence that the priorities of promoters to achieve robust consents leads to contract arrangements for promoters' teams to be incentivised on attainment of the consent, and not on the cost effectiveness or deliverability of the resulting scheme. This seems to encourage a risk averse culture which tends towards detail and limited flexibility. Consideration might be given to alternative arrangements.
34. The study suggests that there is potential to improve deliverability and constructability by appointing a project manager/ management team which oversees the project through planning and delivery, and in particular through the handover period between consent and construction contracts. This would improve the transfer of information about what is proposed in terms of flexibility, and why, to the design and construction team – who are otherwise on a steep learning curve at the beginning of the delivery process.
35. The study also suggests that the engagement of construction partners or advice in the early planning and design development stages of projects would better inform their requirements for flexibility and reduce requests for detail further into the process.

Training and Dissemination

36. Regular promoters in the system are now clearly learning lessons about how to improve project flexibility and deliverability through the Planning Act process, however, the evidence suggests that those who are less regularly exposed to the system are not benefiting from the lesson learned. A process of dissemination, beyond the high level information available through conferences and the like, particularly targeted at key sections of the stakeholder group, would seem to a sensible idea.
37. In particular, greater dissemination of case studies which show both the methods to deliver greater flexibility, and the potential for benefits to accrue to promoters, consultees and affected communities would help to increase confidence in the use of requirements which allow further detail to be agreed at later stages of projects, when more information is available about design, construction process, and technology. This suggests that there is a need for more rigorous post project monitoring and evaluation.

Preliminary Recommendations

38. The preliminary recommendations of this study are set out above. Our next steps are to fully test these recommendations with stakeholders to make an assessment of their potential feasibility and usefulness in terms of improving project delivery. This will lead to a series of final recommendations, and a proposed action plan setting out how it is proposed to take them



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forward.

39. NIPA would be very keen to engage with the National Infrastructure Commission during the completion of this work, as it seems very likely that it will provide many useful suggestions which answer the question it has asked. The Final Report will be provided in due course.