

Consultation on the revised draft National Policy Statements for Energy Infrastructure

Wildlife and Countryside Link response January 2011

Wildlife and Countryside Link (Link) brings together 34 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practise and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic environment and biodiversity. Taken together our members have the support of over 8 million people in the UK and manage over 690,000 hectares of land.

This response highlights Link's major concerns (more detailed responses will be submitted by individual Link members) and is supported by the following eight organisations:

- Amphibian and Reptile Conservation
- Buglife – The Invertebrate Conservation Trust
- Butterfly Conservation
- Campaign for National Parks
- Campaign to Protect Rural England
- Friends of the Earth England
- Royal Society for the Protection of Birds
- WWF-UK

Background

National Policy Statements (NPSs) offer the opportunity to create a proper strategic framework for decision-making on individual projects, which fully incorporates environmental considerations. A number of organisations welcomed the principle of NPSs when they were first proposed in the Planning White Paper of 2007, and subsequently as they became enshrined in part 2 of the Planning Act 2008. Environmental groups had complained for many years that the lack of coherent government policy on sustainable development for some sectors created strategic uncertainty and led to environmentally-damaging development coming forward. Business and environmental groups alike had complained that policy has sometimes only been formulated in response to specific proposals, and that inquiry time has been needlessly spent in debating it. The provisions of the Act establishing NPSs received a broad consensus of support, both within Parliament and outside. For environmental groups, however, our hopes were dashed by the publication of the first drafts of the energy NPSs by the Departments for Energy & Climate Change (DECC) in November 2009.

Link, its members, and the Energy and Climate Change Select Committee, both expressed strong criticisms of the original draft energy NPSs. Link considered they were:

- A disjointed set of development control documents, rather than setting out an integrated strategic policy;

- A developers' charter that asserts overwhelming need for new infrastructure, constraining consideration of alternatives;
- Relegating environmental concerns to issues of local detail;
- Subject to insufficient public consultation and scrutiny; testing against evidence and examination;
- Legally flawed because the Appraisals of Sustainability failed to comply with the SEA Directive's requirement to consider reasonable alternatives.

Link recommended DECC should:

- Revisit the Appraisals of Sustainability and Habitats Regulations Assessment to ensure full compliance with the SEA and Habitats Directives;
- Involve all stakeholders with environmental expertise;
- Explore further ways of engaging the affected communities and the wider public in a debate over the country's energy infrastructure needs, including holding hearings, or an Enquiry in Public of the NPSs
- Require the Infrastructure Planning Commission to consider the carbon impacts of each development and provide it with the discretion to refuse development that would adversely impact on the ability of the UK to meet its greenhouse gas emission reduction targets; and
- Refine the statements of need such that there is a more accurate assessment of what the actual need is.

We welcome DECC's decision to revisit and revise the Appraisals of Sustainability (AoSs) and the Habitats Regulations Assessments. However problems remain with the AoSs, and our other concerns have not been addressed. The draft NPSs remain substantially unchanged, and we remain opposed to their designation in their current form.

Link members' main concerns

Lack of strategic policy content in the draft NPSs

The NPSs are more development control documents than strategic policy statements. The energy NPSs are not spatial (except for nuclear, which is site-specific) and they are not integrated with each other or with non-energy NPSs. As national planning documents, the draft energy NPSs should set out spatially explicit guidelines to help direct the future development of energy infrastructure. Giving a stronger steer to decision-makers about the optimum locations for new energy infrastructure would make it more likely that future energy infrastructure could be developed in a coherent manner which integrates environmental, social and economic concerns.

We would like to see more detailed spatial criteria in the documents to ensure applications come forward for projects in the most appropriate locations. Providing more spatial criteria is likely to reduce uncertainty for developers and the public, which should allow for more rapid development of necessary infrastructure. We are concerned that the absence of more explicit spatial guidance, combined with the overwhelming presumption in favour of development that the need statement creates, will lead to poorer outcomes for the natural environment and local communities. In view of the ongoing major reforms

to the planning system and the Energy Market Review it is imperative that the energy NPSs fit with the emerging policy landscape.

Flawed need case

Although the need case now has a better evidence base, there remains insufficient clarity on how much infrastructure or of what type is needed, or where. The NPS directs the IPC to assume need rather than interrogate the way in which need applies to a particular project, stripping the decision maker of its ability to facilitate sustainable development. As such the need argument is not robust, and it is being used to justify unnecessary non-renewable build.

Link continues to call into question the key principles establishing the need case which guide the IPC's decision-making, particularly those contained in paragraph 3.1 and 4.1.1(i) of EN-1. Within these paragraphs, the need for new energy infrastructure is applied indiscriminately and without any quantification related to particular technology types. The IPC is directed in paragraph 3.1.3 to assess applications on the basis that need has been established and that need is urgent – an upgrading of the need case from the initial drafts which specified a 'significant' need.

Also of significant concern to Link is that the NPSs simply assert an overwhelming, urgent need for new infrastructure, which is used to relegate any environmental concerns to issues of local detail. Paragraphs 3.1.4 and 4.1.1(i) of EN-1 direct the IPC to give substantial weight to projects that would contribute to filling the need and, essentially, establish an overwhelming presumption in favour of such development. Although other principles in paragraph 4.1 advise the IPC to consider impacts and benefits from the proposed development, they are dwarfed by the primary principle to consent development proposals that meet the stated need. It is extremely difficult to see how local social and environmental impacts can possibly outweigh such a presumption.

There is also no suggestion that need will not continue to be significant if the IPC consents enough infrastructure to meet expected need. In particular, the case for new fossil fuel generating capacity is not robust, given the amount of capacity already under construction or in the planning system. As it stands, the need case risks prompting another 'dash for gas' or reliance on new nuclear plants to solve the carbon crisis. The Government should put in place stronger policies to prevent lock-in to high carbon and unsustainable infrastructure, and to ensure that renewables development is not crowded out by new gas and nuclear.

The proposals in the Electricity Market Reform consultation contain very weak Emissions Performance Standards which explicitly allow new gas. The weak EPS further strengthens the case for a safeguard in the NPS through a limit to the amount of consented gas. Otherwise the UK will fail to meet its 2020 renewables target and the CCC's essential 2030 target.

Link recommends that the needs case be reconsidered and the actual need for energy infrastructure is separated for each technology type to provide a much more accurate picture of what infrastructure and how much is actually needed. In particular, we request the removal of paragraph 4.1.1(i).

Over-reliance on market mechanisms to deliver low carbon infrastructure

Ofgem¹ and the Committee on Climate Change² have both recently expressed concerns that the current market-led approach to energy system development will not deliver sufficient low-carbon infrastructure. The NPSs should be designed to enable a much more actively planned approach to development, which takes full account not just of climate change, but also of wider environmental considerations, including direct and indirect impacts on biodiversity and landscapes.

In attempting to design a more streamlined consenting regime and appease developers, DECC is effectively reducing the planning system to nothing more than a rubber stamping exercise. DECC expresses its views that the role of the planning system is simply to:

“provide a framework which permits the construction of whatever Government – and players in the market responding to rules, incentives or signals from Government – have identified as the necessary amounts of the right kinds of major energy infrastructure in the right places”³

If this is the case, we fail to see what the role of the IPC is other than to say yes to whatever development proposals are put to it. **Link completely disagrees with this statement and requests it is removed from the revised draft EN-1.** The role of planning in helping to implement environmental conservation and climate change policies and promote sustainable infrastructure has been recognised for some time, both nationally and internationally. The planning system has moved on from sectoral, land use policy to a more spatial, integration role because it has been recognised as integral to achieving sustainable development in practice. DECC must acknowledge and accept this and allow the planning system, and the Energy NPSs, to play their rightful role in helping to deliver energy and climate change policy on the ground in a sustainable way.

No clear decarbonisation pathway and risks to carbon budgets

Commenting on the original drafts of the energy NPSs, the Energy and Climate Change Committee recommended that the Government take on board the Committee on Climate Change’s proposal to fully decarbonise the electricity sector by 2030. It is of deep concern that the Government has not followed this recommendation, and is only looking at the short-term (to 2022 the end of the first budget period) and the long-term (the 2050 target). In terms of climate change it is the *cumulative* carbon emissions over the whole period 2010-2050 which matter, so the 2030 issue is critical. The Government’s assertion that it does not need to measure carbon emissions of new power stations (because it is on track to meet its budgets to 2022) is dangerously complacent – these stations have a working life of several decades, not just to 2022. We believe that the Government must amend their NPS and energy policy to be compatible with necessary

¹ Ofgem, February 2010. *Project Discovery: Options for delivering secure and sustainable energy supplies.*

² The climate change committee fourth carbon budget report. <http://www.theccc.org.uk/reports/fourth-carbon-budget>

³ EN-1, paragraph 2.2.4, pg 9

targets for 2030 for the electricity sector. In the shorter term, we are very concerned that in the re-drafted energy NPSs the IPC is still directed not to consider project's carbon emissions when consenting new electricity generation capacity. There is a very high risk this could result in lock-in to high carbon infrastructure and jeopardise UK's chances of meeting its carbon budgets.

Link thoroughly agrees with Recommendation 9 of the Report of the Energy and Climate Change Select Committee⁴ which outlines a proposed way forward for the IPC to consider the life-cycle carbon impacts of development using advice from the Committee on Climate Change. We do not feel that the Government has provided sufficient justification for refusing to take on board this recommendation. We strongly urge the Government to reconsider its position and adopt the recommendation of the Committee.

We recommend that "energy from waste" plants, should not be included in the renewable NPS. The NPS itself says that energy from waste plants contain "non-renewable sources of waste". This proportion of "non-renewable" sources is not small, and the average CO₂e output of an energy from waste plant is more than an average gas fired power station⁵. Energy from waste plants, although they contain some renewable fuel, are in reality fossil-fuel plants.

As well as their direct CO₂ emissions, energy from waste plants have an additional, and major problem, regarding climate change impacts. Energy from waste plants are in direct competition with recycling and reuse as alternatives to landfilling waste. Large energy from waste plants will require a constant feed of large quantities of "residual" waste for several decades. In addition in many cases such plants require local authorities to enter into long-term contracts—typically 25 years—guaranteeing supply of large volumes of waste This puts direct pressure on these local authorities not to improve recycling facilities and rates. Recycling and reuse is a preferred option to energy from waste in the Government's waste hierarchy, and in addition recycling and reuse have much lower carbon impacts—because recycling prevents the need for mining, extraction and processing of virgin materials. The UK could save an extra 20 million tonnes of CO₂e by recycling materials that are currently thrown away⁶.

We are also concerned that the inclusion of these plants in the renewables NPS will encourage developers to propose much larger energy from waste plants, exacerbating the above problems, as greater than 50MW energy from waste plants would fall under the NPS regime, which under current proposals have no requirement for assessment of either need or carbon emissions, and have heavily pared down opportunities for public participation in decision-making. Given the already high degree of controversy consistently associated with incinerator planning applications we do not envisage the

⁴ Recommendation 9 of the Energy and Climate Change Committee, 'The proposals for national policy statements on energy: Third Report of Session 2009-10 Volume 1', paragraph 37, pg 17

⁵ An electricity-only incinerator has far higher emissions than a gas plant, a CHP incinerator has similar emissions to a gas plant. The technical issues here are complicated but the bottom line is that energy-from-waste plants have major carbon emissions. See table 1 page 11 of

www.foe.co.uk/resource/reports/changing_climate.pdf

⁶ Page 2, www.foe.co.uk/resource/reports/gone_to_waste.pdf

public will take kindly to the combination of larger plant applications and reduced opportunity to participate in the decision-making process.

Inadequate safeguards for biomass sustainability

The IPC is instructed not to consider the sustainability of biomass fuel sources, because DECC asserts this can be better achieved through administration of the Renewables Obligation Order. We are not satisfied that the proposed safeguards will be adequate to protect wildlife and the natural environment, particularly in biomass exporting countries, nor to prevent significant net carbon emissions resulting from an expansion of the biomass power sector.

Weakening of rules on overhead power lines

Despite very significant public concern about the impact of overhead power lines on the countryside, protection for Areas of Outstanding Natural Beauty and National Parks has actually been reduced in the revised drafts. Electricity networks have a significant impact on the beauty and tranquillity of the countryside. To date the industry has followed a set of principles, the 'Holford Rules', in routing new overhead lines. These have generally worked effectively to limit this impact. The second draft of the NPS on electricity networks proposes to weaken the standing of the Holford Rules. We fear that the effect of this would be seriously to weaken the protection of areas of countryside designated for their national landscape importance, and are very concerned that this proposed policy change has not been highlighted by DECC in the current consultation process.

Weakened protection for SSSIs

In redrafting the Overarching Energy NPS now omits an important provision in Planning Policy Statement 9 for the protection of Sites of Special Scientific Interest. PPS9 (and the previous draft of EN-1) requires the consenting authority considering proposals that would adversely affect a SSSI to be satisfied that the development cannot reasonably be located on any alternative sites across the country that would result in less or no harm. We are very concerned that such a major shift in policy and weakening of the protection given to SSSIs has not been highlighted in this consultation process. We urge Government to reinstate this provision.

Weakened protection for National Park and AONBs

Paragraph 5.9.9 of EN-1 on visual and landscape impacts introduces a new policy directing the IPC to consider consenting major development in nationally designated areas where it will make a 'contribution to the regional economy.' This very substantially weakens the long-established approach to assessing major development proposals in nationally designated areas as set out in paragraph 22 of PPS7. We urge Government to retain existing protections as set out in PPS7.

Inconsistent and missing impact criteria

Biodiversity criteria need to be robust enough to ensure that low-carbon infrastructure development does not exacerbate the biodiversity crisis. There is some inconsistency in

the way in which biodiversity policy has been incorporated into individual NPSs, and some omissions of ecological impacts. In particular, there is a gap in the coverage of generic ecological impacts (such as habitat loss and fragmentation, and disturbance displacement) in the Overarching Energy NPS at the start of Section 5.3. The other NPSs suggest that these generic impacts are covered in EN-1, and their absence appears to be a significant drafting error. We urge DECC to revise Section 5.3 so that these generic impacts are covered.

Insufficient weight given to Welsh planning policy

The Renewable Energy NPS (EN-3) does not give sufficient weight to Welsh planning policy, particularly the spatial approach of Technical Advice Note 8 (TAN8, Planning for Renewable Energy).

Uninformative Appraisals of Sustainability

While the draft AoSs are an improvement on the previous drafts, they fail to serve the purposes of the SEA Directive in terms of providing information on the likely significant effects on the environment of implementing the plan and reasonable alternatives. The alternatives are so loosely defined, and the methodology used to assess them so broad-brush, that stakeholders and Ministers cannot be adequately informed regarding the relative impacts of the alternatives available.

Insufficient guidance on Habitats Regulations Assessment (HRA).

The NPSs do not provide clear guidance on the proper application of the tests in the Habitats Directive and its implementing regulations⁷.

Recommendation

It is deeply disappointing that DECC did not seek input from stakeholders in the re-drafting process, and that the revised energy NPSs are not substantially different from the previous drafts. Recommendations and criticisms made in our earlier consultation response have been dismissed or ignored, as have the findings of the Energy and Climate Change Committee. We still, therefore, do not believe that the NPSs are suitable for approval.

We note that, according to CLG's Business Plan, the Major Infrastructure planning Unit (MIPU) will not be in operation until April 2012. The same plan suggests that the energy NPSs could be designated by June 2011, which would mean a 10-month period during which the IPC could be making decisions independently, which goes against the Government's desire for democratically-accountable decision making.

This gives a window for a final iteration of the NPS. It is important to get the energy NPSs right, not just because of the significance of the issues involved, but because they will set a precedent for other NPSs and for future revisions.

⁷ The Conservation (Natural Habitats, &c) Regulations 1994, as amended. SI 1994 No. 2716.

We recommend Government should seek to avoid a period of democratically unaccountable decision-making, by delaying ratification of the energy NPSs until the MIPU is operational in Spring 2012. Government should use the intervening period to revise the energy NPSs so that they:

- Address the criticisms contained in this consultation response;
- Reflect the recommendations of the CCC re 2030 decarbonisation;
- Properly reflect the Energy NPSs role within the emerging new planning system;
- Are informed by a proactive and participatory SEA process designed to identify ways to maximise the benefits (and minimise potential drawbacks) of a more spatially explicit approach to planning for major energy infrastructure.

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