

National Policy Statements fail the environment

Wildlife and Countryside Link January 2010

Wildlife and Countryside Link (Link) brings together 35 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 8.3 million people in the UK and manage over 690,000 hectares of land.

Many Link members were part of the Better Planning Coalition (formerly known as the Planning Disaster coalition) which campaigned on the Planning Bill. The coalition's work is now being taken forward by Link's Land Use Planning Working Group.

This response is not intended to deal with the specific policy content of the draft National Policy Statements (NPSs), which will be dealt with in detailed responses by Link members, but to deal with high-level issues about the nature of NPSs and their appraisal. It is therefore addressed to all the Government Departments responsible for NPSs and to the Department of Communities and Local Government and is supported by the following 14 organisations:

- Amphibian and Reptile Conservation Trust
- Badger Trust
- Buglife – The Invertebrate Conservation Trust
- Butterfly Conservation
- Campaign to Protect Rural England
- Campaign for National Parks
- Council for British Archaeology
- Friends of the Earth England
- The Grasslands Trust
- Royal Society for the Protection of Birds
- The Wildlife Trusts
- Wildfowl & Wetlands Trust
- Woodland Trust
- 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. The Planning Act 2008 requires that they undergo public consultation and Parliamentary scrutiny, as well as an appraisal of sustainability. In preparing them, the Secretary of State must do so with the objective of contributing to

the achievement of sustainable development. In particular, the Secretary of State must have regard to the desirability of (a) mitigating, and adapting to climate change; (b) achieving good design (s. 10, Planning Act 2008).

Many 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 Act. Environmental groups had complained for many years that the lack of coherent government policy 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 have been dashed by the publication of the first tranche of NPSs by the Departments for Energy & Climate Change (DECC) and Transport (DfT), covering energy and ports infrastructure respectively.**

There is no vision of place

There is little strategic vision in any of the draft NPSs beyond envisaging that there will be more of every infrastructure type. How much more is unclear, only it seems to be much more. As a result, NPSs are more development control documents than policy statements.

With the exception of nuclear, the NPSs are not location-specific. Indeed, they cannot be described as spatial in any sense of the word. Some of their generic criteria may apply more particularly in some places rather than others (for example, in protected landscapes or wildlife sites). Ports can only be sited in a limited number of coastal or estuarine locations, for example. Yet despite this, the NPSs' view of the world is of a blank canvas; one where the Government is not concerned where the infrastructure goes, only that it should go somewhere, leaving the Infrastructure Planning Commission to sort out the local issues.

The draft NPSs are far from aspirational; not only do they lack vision and a sense of place, they are not integrated either. Apart from some similar generic criteria and the timing, there is little to link the energy and ports NPSs. There is no sense in which the published NPSs fit together to form part of a single strategic national infrastructure plan, but rather each NPS is presented as a separate plan or programme for the particular infrastructure type. Whilst the overarching energy NPS is intended to be read with each of the technology specific energy NPSs, there is a distinct lack of connectivity between the technology specific NPSs themselves. Furthermore, the delay in the timing of the road and rail networks NPSs makes it impossible to assess how joined up ports development will be with new road and rail infrastructure.

The development of NPSs could have been the first step towards an integrated spatial strategy for England, the missing piece of the jigsaw in England's planning framework¹. However, we believe that what we have been presented with is a missed opportunity.

The appraisal of sustainability is inadequate

The NPSs envisage a significant amount of infrastructure being developed over the next few years, to replace ageing infrastructure and to meet the energy and economic challenges of the future. The Infrastructure Planning Commission is already receiving information from proponents of nationally significant infrastructure projects (NSIPs) as to the nature and type of each application and to enable it to estimate that it may receive up to 60 applications in its first year of operation. One might reasonably assume therefore, that the appraisal of sustainability of each NPS would make some overall assessment of the environmental impacts of the expected programme for development in the immediate future.

The problem is, with the exception of nuclear, there is no programme. This cannot be in itself due to the market-oriented nature of energy and ports development; after all, most other forms of development (homes, retail, business) are also provided by the market. As the statements are high-level strategy, it would be unreasonable to expect a very detailed assessment, but it is not even possible to tell from the appraisals in general terms what the overall environmental impact might be. In fact, it seems that the appraisals are not actually assessing the impact of the NPSs on the environment, but rather their impact on the consenting regime for NSIPs – which is not the same and nor is this the purpose of the appraisal.

A further omission is that, whilst a stated objective for reforming the planning system is to assist in the transformation to a low carbon economy, the appraisals do not attempt any kind of carbon impact assessment. Instead, complete faith is placed in the fact that the Government's climate change policies will not allow carbon intensive development to come forward and that the policies only promote low carbon forms of infrastructure. The result is the farcical summary of the appraisals that the NPSs must therefore have a positive environmental impact.

In discussions on the Planning Bill, environmental groups received legal advice that NPSs should be subject to the requirements of the European Union Strategic Environmental Assessment Directive², the purpose of which is to provide for a high level of protection of the environment and to contribute to the integration of environmental considerations into the preparation and adoption of plans and programmes with a view to promoting sustainable development. We were initially pleased that both DECC and DfT seem to have accepted this and have chosen to incorporate the requirements of the Directive into the appraisals of sustainability.

The way in which the assessment has been carried out, however, appears to be nothing less than a case study of how to circumvent the spirit of the Directive. If this is not the deliberate intention, the assessment approach has been poorly conceived and there

¹ Wales already has the Wales Spatial Plan. How National Policy Statements relate to the Wales Spatial Plan is in itself a matter for concern.

² Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment

seems to be little real intention that the assessments should influence the planning process.

In particular, the objectives of the energy NPSs have been framed so narrowly that any sensible discussion about alternatives is precluded. It is clear that the consultants undertaking the energy appraisals were themselves concerned about this, and suggested a long list of potential alternatives, all of which were dismissed as unreasonable by DECC. The result is again almost farcical, with the main alternatives being considered reduced to whether one should, or should not, have a national policy statement at all. For a detailed analysis we refer to the report by Collingwood Environmental Planning commissioned by the RSPB and WWF³.

By considering infrastructure in isolation and in a piecemeal way without proper assessment of its effects, the new system also removes the opportunity for proper understanding of the natural environment's role in creating a sense of place and mitigating and adapting to climate change.

NPSs are a developer's charter

The question of need lies at the heart of strategic planning. Regional plans, for example, have to tackle questions such as how much land is needed, and in what areas, for homes, shops and businesses. According to the Act, NPSs may "set out ... the amount, type or size of development ... which is appropriate nationally or for a specified area." (s 5(5)(a)).

The NPSs (again, with the exception of nuclear), entirely duck this question. There are, indeed, projections of demand for different infrastructure types, but the NPSs do not even give an indicative view of how much is needed, or where. They adopt a "predict and provide" approach, implying a lack of serious consideration of options for demand management and other solutions to the identified public need, whether for low-carbon energy or port capacity.

The conclusion made within the NPSs is simply that we are likely to need a lot more of everything, and indeed that we should plan for a lot more than we actually need because not all of it may happen; there is a perceived need for spare capacity. The Infrastructure Planning Commission is specifically instructed that it must not therefore question this assumption of need.

Furthermore, where proposals will affect Natura 2000 sites (most major port developments, for example), the assumption of need and the perceived national benefits of increased infrastructure development are used to demonstrate satisfaction of the test of 'imperative reasons of overriding public interest' under the Habitats Regulations⁴, without proper assessment of the environmental impacts and a completely inadequate strategic assessment of alternatives.

³ Sheate, W, Eales, R & Vaizgelaite, I (January 2010) *Appraisals of sustainability and the new national policy statements: opportunities missed and challenges to come?* Final report to RSPB and WWF by Collingwood Environmental Planning

⁴ Conservation (Natural Habitat, & c.) Regulations 1994 (as amended) which transposes the Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

The NPSs are a developer's charter. They establish an overwhelming need for new infrastructure which is used to relegate any environmental concerns to issues of local detail. Even where this 'local' detail concerns impacts on internationally-designated sites, the effect of the policy will be to weight strongly the decision in favour of granting consent because both the NPSs and their appraisals introduce a clear assumption that the overall environmental impact of infrastructure development will be positive.

The draft NPS policies encourage the Infrastructure Planning Commission to treat each developer's application favourably, but do not encourage proper consideration of the context and relationship which each application should have to other infrastructure and the natural environment.

They are legally flawed, and unsound

We can only conclude that the NPSs and their appraisals of sustainability are both legally flawed and unsound.

They are legally flawed because they fail to comply with the SEA Directive, in particular because of their failure to consider properly reasonable alternatives as discussed above. They also fail on issues such as an inadequate non-technical summary (for the Ports NPS Appraisal of Sustainability) and the poor quality of assessment of environmental effects. There are also issues of compliance with the Habitats Directive, both in terms of the strategic assessments carried out on the NPSs and the way in which the Infrastructure Planning Commission's consideration of alternative solutions is heavily circumscribed by the NPS.

They are unsound because they fail as strategic planning documents, fail to meet their intended aspirations and they fail to provide helpful, strategic planning guidance to the Infrastructure Planning Commission.

The public consultation and scrutiny is inadequate

The consultation and scrutiny process of the energy and ports NPSs are still underway, but there are already grounds for concern about how robust the process will be.

Although the consultation periods are slightly longer than the Cabinet Office recommended minimum of 12 weeks, this has included the Christmas and New Year holiday period. It also included the period of the Copenhagen summit in December 2009, which fully engaged climate change and energy specialists in many NGOs at a crucial time in responding to the energy NPSs.

DECC and DfT have held a number of public and stakeholder events, which are welcome, but we are concerned about reports of poor publicity and attendance at some of these events. The Departments should be transparent about the numbers attending events and whether they are representative of local communities, and should be prepared to hold follow-up events in localities where turnout was poor.

Apart from the nuclear NPS, stakeholder consultation on scoping of the Appraisals of Sustainability and the Habitats Regulations Assessments was limited to statutory bodies. While this is the minimum legal requirement, it was a missed opportunity to engage

stakeholders who have expertise in this field. This contrasts with DECC's approach to involving stakeholders in the Strategic Environmental Assessments for Offshore Energy and Severn Tidal Power, which has allowed NGOs to engage constructively in these processes.

The process of Parliamentary scrutiny has been squeezed by the delay in NPS publication and the forthcoming general election. It is hard to see how Select Committees can be expected to thoroughly scrutinise the NPSs in this time, especially as they will not be able to take account of responses to the consultation received after 15 January.

Recommendations

Link remains supportive of the principle of NPSs and believes that the NPSs can be made robust by allowing the policies to be developed in a more collegiate, deliberative and participative process. In particular DECC and DfT should:

- Allow time and resources for a further review of the draft policies in view of the reports of scrutiny by the relevant Select Committees, and hold further public examinations to gain additional expert evidence to inform policy where needed
- Revisit the Appraisals of Sustainability and Habitats Regulations Assessment to ensure full compliance with the SEA and Habitats Directives, in particular to look at a full range of alternatives
- 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 and port infrastructure needs
- 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
- To refine the statements of need such that there is a more accurate assessment of what the actual need is in planning terms and what infrastructure must be built to fulfil this need.

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