



**Prosperous Communities  
Committee**

**Tuesday 1<sup>st</sup> August 2023**

**Subject: Delegation of Responsibility for participation in NSIP  
examinations**

Report by:

Director of Planning, Regeneration &  
Communities

Contact Officer:

Russell Clarkson  
Development Management Team Manager

russell.clarkson@west-lindsey.gov.uk

Purpose / Summary:

To review and update the decision and  
delegation protocols for the participation of West  
Lindsey District Council in the examination of  
Nationally Significant Infrastructure Projects  
(NSIPs)

**RECOMMENDATION(S):**

To review and agree the updated Decision and Delegation Protocols set out at  
Appendix 1 for West Lindsey District Council when participating in the  
examination of a Nationally Significant Infrastructure Project.

## IMPLICATIONS

### **Legal:**

The scheme of decision and delegation protocols were approved at the Committee's meeting of 2<sup>nd</sup> November 2021. This contained the provision that:

*"The Case Officer will present the draft Written Representations to set out the authorities view on the application, considering the technical evidence base and the findings of the public and stakeholder consultation. At this point we will need to consider the delegation of responsibility for participation in the Examination and this will be approved by Prosperous Communities Committee at this point."*

Legal Services Lincolnshire have instructed a Barrister from Kings Chambers to provide legal oversight of the process.

**(N.B.) Where there are legal implications the report MUST be seen by the MO**

### **Financial :FIN/46/24/PC/SST**

Resourcing of the NSIP process has been subject to a separate decision from this paper, agreed 2<sup>nd</sup> November 2021.

**(N.B.) All committee reports MUST have a Fin Ref**

### **Staffing :**

Resourcing of the NSIP process has been subject to a separate decision from this paper, agreed 2<sup>nd</sup> November 2021.

**(N.B.) Where there are staffing implications the report MUST have a HR Ref**

### **Equality and Diversity including Human Rights :**

The NSIP process is overseen by the Planning Inspectorate, and includes processes for public engagement both in the pre-application stage (community consultation) and examination phases (open floor hearings).

### **Data Protection Implications :**

None arising.

### **Climate Related Risks and Opportunities:**

Large scale energy infrastructure is included in the NSIP process. This report process how West Lindsey Council may effectively participate in the process as "host authority".

### **Section 17 Crime and Disorder Considerations:**

None arising.

**Health Implications:**

Health impacts may be addressed within the Local impact Report which is included within the proposed schedule.

**Title and Location of any Background Papers used in the preparation of this report :**

National Infrastructure Planning Advice Note 2: The role of local authorities in the development consent process:

<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-two-the-role-of-local-authorities-in-the-development-consent-process/>

**Risk Assessment :**

**Call in and Urgency:**

**Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?**

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

**Yes**

**No**

**Key Decision:**

A matter which affects two or more wards, or has significant financial implications

**Yes**

**No**

## **Executive Summary**

1. There are currently six Nationally Significant Infrastructure Projects (NSIPs) being proposed within the District of West Lindsey. NSIPs follow a different consenting regime, under the premise of the Planning Act 2008.
2. They will be considered by an Examiner appointed by the Planning Inspectorate. The Examiner will then make recommendations to the relevant Secretary of State, who will determine the application.
3. National guidance recommends that Local Authorities have adequate delegations in place in order to actively participate in the Examination Process.
4. For this purpose, a Scheme of Decisions and Delegations Protocol was agreed in November 2021.
5. However, following the experience of recent examinations with the Gate Burton and Cottam Solar projects, it is recommended that the approved Scheme of Decision and Delegation Protocol is revised and expanded to cover further requirements that have arisen through our experiences with those examinations so far.
6. It is recommended that the Committee consider and approve the updated Scheme of Decision and Delegations protocol for Nationally Significant Infrastructure Projects, set out at appendix 1 to this report.

# 1 Introduction

- 1.1 Developments that qualify as Nationally Significant Infrastructure Projects (NSIPs) under the provisions of the Planning Act 2008 (PA2008) are subject to a different consenting regime to those planning applications that are typically considered by West Lindsey District Council as the Local Planning Authority.
- 1.2 Instead, NSIPs are examined by the Planning Inspectorate, a Government Agency. As the Examining Authority (ExA) they will make recommendations to the relevant Secretary of State (SoS), who will be responsible for determining the application.
- 1.3 There are six stages to the Development Consent Order process undertaken by NSIP projects:
- Pre-application (no time limit)
  - Acceptance (up to 28 days)
  - Pre-examination (typically 2-3 months)
  - The Examination (Up to six months)
  - Recommendation and Decision (Up to 6 months, in total: The ExA has 3 months to make their recommendations to the SoS; the SoS then has 3 months to determine the application)
  - Post-decision (6 weeks)
- 1.4 Whilst the role of the Local Authority (as a “host authority”, or neighbouring authority) is not mandatory – it is strongly advised<sup>1</sup> by the Planning Inspectorate that the local authority participate. As such developments are by their nature “major infrastructure” they will be likely to have a significant impact upon the District and its communities and it is therefore important that the Local Authority is able to actively participate through the process.
- 1.5 The National Infrastructure Planning Advice Note 2<sup>2</sup> sets out the following advice to local authorities:

## *12. Delegations*

*12.1 During the examination there will be numerous deadlines for local authorities and other interested parties to submit further representations. These often require swift responses to ensure all matters can be fully explored before the close of examination. In making its recommendation to the relevant SoS, the ExA can only take into account evidence that has been received by the close of the examination.*

*12.2 Some local authorities may want to seek their members’ approval for certain key examination documents such as the LIR,*

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<sup>1</sup> <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-two-the-role-of-local-authorities-in-the-development-consent-process/#1>.

<sup>2</sup> <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/advice-note-two-the-role-of-local-authorities-in-the-development-consent-process/#12>.

*written representation or SoCG, although this is not required. The ExA's main concern is that once the examination timetable is published, interested parties adhere to the deadlines in it. Late submission of an important document such as the LIR or SoCG may prejudice the ability of other interested parties to consider and comment on its content, potentially disrupting the examination timetable and resulting in additional costs for other interested parties.*

*12.3 A local authority will therefore need to ensure it has adequate delegations in place. There is unlikely to be time to seek committee approval for representations made by a local authority during the examination. In general terms a local authority must assume that it won't be possible for the examination timetable to be structured around its committee cycle.*

1.6 In view of this advice, a "Decision and Delegation Protocol" for NSIPs was agreed by the Committee at its meeting of 2<sup>nd</sup> November 2021. This sets out that some of the key documents that the Local Planning Authority may produce will be referred to the Committee for its approval. This includes the Local Impact Report (LIR) and "Written Representations" – the two key documents that the LPA may produce which sets out how the development will impact locally, and what the LPA's position is. It also sets out a number of technical documents and requirements that are delegated to the Assistant Director of Planning and Regeneration (now Director of Planning, Regeneration and Communities) in consultation with the Chair of the Committee.

1.6 As part of the scheme it sets out under the examination process the following:

*Prosperous Communities Committee to be timetabled no later than 5 weeks following DCO submission to the Planning Inspectorate. This may need to be a special meeting.*

*The Case Officer will present the draft Written Representations to set out the authorities view on the application, considering the technical evidence base and the findings of the public and stakeholder consultation.*

*At this point we will need to consider the delegation of responsibility for participation in the Examination and this will be approved by Prosperous Communities Committee at this point.*

1.7 Examination of the 500MW Gate Burton Energy Park commenced on 4<sup>th</sup> July 2023. The ExA has already set deadlines for the submission of the LIR and Written Representations. Following publication of the examination timetable, it is now considered relevant to review and update the Decision and Delegation protocol to reflect an actual examination timetable and ensure that the Local Planning authority has the maximum opportunity to respond quickly and adequately to the Examining Authority's requirements.

## 2. Nationally Significant Infrastructure in West Lindsey

2.1 At the time of writing, there are six known NSIP developments within the District, and all at various stages of the process:

Development	Developer	Stage in Process
Gate Burton Energy Park	Low Carbon	Examination
Cottam Solar Park	Island Green Power	Pre-examination
West Burton Solar Park	Island Green Power	Pre-examination
Tillbridge Solar Park	Tillbridge Solar Ltd	Pre-application
Viking CCS Pipeline	Chrysaor Production (UK) Limited	Pre-application
Humber Low Carbon Pipeline	National Grid Carbon (NGC)	Pre-application

2.2 The six-month examination period of the Gate Burton Energy Park commenced on 4<sup>th</sup> July 2023 and is scheduled to run until 4<sup>th</sup> January 2024 (the full six months available to the ExA). Following the Preliminary meeting held on 4<sup>th</sup> July 2023, the ExA published his final timetable (see appendix 2) on Wednesday 12<sup>th</sup> July 2023.

2.3 On Monday 10<sup>th</sup> July, the ExA for the Cottam Solar Project published his draft examination timetable (see appendix 3). A preliminary meeting will be held on 5<sup>th</sup> September 2023 to discuss the programme, and the final programme published shortly thereafter. The draft timetable anticipates commencement on Tuesday 5<sup>th</sup> July and closing on Tuesday 5<sup>th</sup> March 2024 (again, the full six months available).

2.3 It is clear on comparing the two timetables, that whilst both examiners have programmed the full six months available to them – they have considerable discretion in setting deadlines within that period. For instance, the Gate Burton Examiner has set a deadline of two weeks from commencement, for the submission of the Council’s Local Impact Report, and 5 weeks for the Council’s written representations. The Cottam Examiner has requested both documents be submitted together, on week 6.

2.4 It is clear in both programmes that the Examiner considers the drafting of key documents such as the Statement of Common Ground (SoCG) and draft Development Consent Order (DCO) to be an iterative process, taking place throughout the whole examination period. It is also clear that the Examiner will be regularly asking “Further Written Questions” throughout the process and expecting timely responses (typically within 2-3 weeks) from all parties.

## 3. Updated Scheme of Decision and Delegation Propotocol for Nationally Significant Infrastructure Projects (NSIPs)

3.1 In order to reflect the exacting and variable requirements of an NSIP examination it is now considered that the “Decision and Delegated Protocol” is updated accordingly.

- 3.2 It has become clear that there are a number of stages and requirements that had not been identified on the original scheme and that they should now be included. This includes some pre-application requirements, as well as through the examination process itself.
- 3.3 It is considered that it will be necessary for participation within the Examination period itself, and responses to the Examiner to be delegated to the Director of Planning, Regeneration and Communities, in order to ensure that the Council can achieve maximum participation and ensure timely responses to the Examiners requests. It is considered that key documents including the final SoCG and DCO are consulted with the Chairman of the Committee.
- 3.4 A revised Decision and Delegation Protocol is provided at appendix 1. This has been updated and expanded to include those stages that have been identified through the experience of proceeding through the examination of the current solar NSIP examinations.
- 3.5 The changes proposed (highlighted in yellow at appendix 1) can be summarised as follows:

Pre-application stage:

- **EIA Scoping (new addition)** – The Examining Authority will invite WLDC to comment on the scope of content to be included in the developer’s Environmental Statement. We will be allowed 28 days to comment. It is therefore recommended this is delegated to the Director of Planning, to consult with the Chairman of this Committee, before making representations within the short timescale;
- **S42 Developers Consultation (new addition)** – The developer is required to undertake consultation prior to making their application. The timescale is set by the developer but must be a minimum of 4 weeks. It is considered that any WLDC response is delegated to the Director of Planning, subject to consultation with the Chairman of this Committee;

Pre-examination stage:

- **Relevant Representations (new addition)** – Although not mandatory, the host authority is encouraged to make “relevant representations” at this stage. This is basically a summary of key issues we think will need to be considered at the examination. We will be given a minimum 28 days to respond. It is considered that any WLDC response is therefore delegated to the Director of Planning, subject to consultation with the Chairman of this Committee;
- **Preliminary Meeting (new addition)** – the Examiner will call a Meeting at the start of the examination, to talk through process and procedures. It is recommended that it is delegated to Officers to attend and represent WLDC at the meeting;



Examination Stage:

- **Examiners Written Questions (new addition)** – The Examiner will issue directed questions at parties, including the local authorities, throughout the examination, and typically expect a written response within a short time period (typically 2-3 weeks). It is therefore recommended that this is delegated to the Director Planning to complete;
- **Participation in Hearings (new addition)** – The Examiner will schedule various Hearings throughout the examination, including open floor hearings (OFH); Issue specific Hearings (ISH); and Compulsory Acquisition Hearings. It is recommended that this is delegated to the Director of Planning to attend and represent WLDC.
- **Post-Hearing Submissions (new addition)** – The Examiner may require written post-Hearing submissions. As these will likely be put together by our legal representatives, it is recommended that these are delegated to the Director to complete and submit.
- **Participation in Accompanied Site Inspections (ASI) (new addition)** – the Inspector may arrange an ASI during the examination process. It is advised that it is delegated to officers to be able to request and attend within any arranged ASI.
- **Draft Development Consent Order (DCO) (revised)** – The DCO will be drafted by the applicant, and considered by the Examiner. It is a legal document in effect setting out the terms of the consent, and will include any post-decision requirements. It is clear from the solar project examinations, that the Examiner will treat this as an iterative process, and consult the local authorities throughout the examination. This may commence early in the process (as has been the case with the Gate Burton project). Accordingly, it is recommended that it is delegated to the Director to participate in this process, in consultation with the Committee Chair.

Post Decision Stage

- **Representations on Non-material / Material Changes to the DCO (new addition)** – The SoS has the ability to consider changes to the DCO after the decision is made through a material, or non-material amendment application. The guidance states that *“Local authorities are prescribed consultees for the purposes of the regulations and as such they may be notified of the application and invited to submit a representation. The extent of notification, as it relates to local authorities and other prescribed consultees, will depend on the scale and nature of the change proposed.”* It is therefore recommended that such matters are delegated to the Director of Planning, with consultation with the Committee Chair.

3.6 It is also recommended that the Scheme is revised to distinguish between those NSIP applications that would take place within the District, and those outside the District which we may still wish to participate in. It is recommended that “Out of District” applications are delegated to the Director unless they consider, having consulted with the Chair of Committee, that it

will be likely to have significant effects on the District. In which case the above processes would apply.

#### **4. Recommendation**

- 4.1 It is recommended that the Committee agrees to the revised Decision and Delegation Protocol for Nationally Significant infrastructure Projects, as set out at appendix 1.