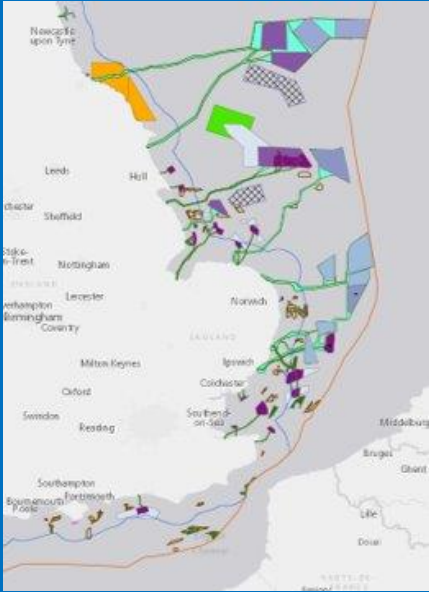
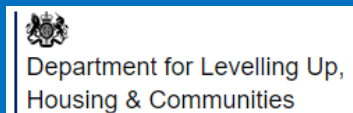


NSIP Centre of Excellence



An Introduction to NSIPs

Funded by



Monday December 18th 2023



SHARPE PRITCHARD

NSIPs: an introduction

Emyr Thomas, Partner &
Parliamentary Agent



Contents

- What is an NSIP?
- What is development consent?
- 6 stage process: (1) pre-application
- 6 stage process: (2) acceptance
- 6 stage process: (3) pre-examination
- 6 stage process: (4) examination
- 6 stage process: (5) recommendation and decision
- 6 stage process: (6) post-decision

What is an NSIP? (1)

No single, over-arching definition of “nationally significant infrastructure project”.

S.14(1) Planning Act 2008: lists 16 types of development which may qualify.

Diverse spectrum of development:

- Highways, harbours, reservoirs, railways.

SoS may add to that list or remove development from it (s.14(3)).

What is an NSIP? (2)

Development falls within one of 5 categories –

- Energy (e.g. power plants)
- Transport (e.g. airports, harbours, highways, railways)
- Water (e.g. dams and reservoirs)
- Waste water (e.g. sewerage systems)
- Waste (e.g. incineration plants)

SoS can direct that certain business and commercial projects are treated as development for which development consent is required (s.35).

What is an NSIP? (3)

Not all development within the 5 categories is an NSIP.

NSIP: a question of size, scale, capacity.

Statutory thresholds for NSIPs: ss.15 to 30.

Example: major road projects

S.14(1)(h) highway-related development;

S. 22 –

- Highway will be wholly in England,
- SoS or National Highways will be the highways authority,
- The area of development is greater than 15 hectares (where it concerns the construction / alteration of motorway)

What is development consent?

Development consent is required for development if the development is or forms an NSIP (s.31)

Consent is included in a **Development Consent Order** (DCO), a super-consent which can include –

- planning permission,
- power to interfere with highways (e.g. to construct and maintain new streets, alter or divert streets; stop up / restrict use of streets),
- power to take steps to protect buildings and enter on land to survey and investigate it,
- power to compulsorily acquire land and rights over land and to take temporary possession of land,
- power to fell / lop trees,
- power to override usual consents that protect the public from nuisance etc.

Operates under **PA 2008** (and SIs made under it), introduced to streamline the decision-making for major infrastructure projects.

6-stage process: (1) pre-application

1. Pre-application

- Statutory duty on applicant to consult on proposals.
- Length of time taken to prepare and consult will vary depending on scale and complexity of project. (It can go on for years).
- Wise to respond to pre-application consultation.

6-stage process: (1) pre-application

- The importance of participating in consultations
- How to participate
- The *Gunning* principles

6-stage process: (2) acceptance

2. Acceptance

- Begins when applicant applies to Planning Inspectorate (PINS) for development consent.
- PINS has 28 days to decide whether the application meets the standards for examination.

6-stage process: (2) acceptance

- Documents, documents, documents.
- The dDCO and Explanatory Memorandum.
- Other key documents.
- The Examination Library.
- Precedents galore.

6-stage process (3): pre-examination

3. Pre-examination

- Persons can register with PINS to become an **Interested Party** by making a **Relevant Representation [RR]**.
- RR: a summary of a person's views on an application. (High level, not evidential).
- The Examining Authority (**ExA**) is appointed at this stage.
- IPs invited to attend a Preliminary Meeting, run and chaired by ExA.
- No statutory timescale. (Usually c. 3 months).

6-stage process (3): pre-examination

- Making effective Relevant Representations.
- Helpful precedents –

<https://infrastructure.planninginspectorate.gov.uk/>

- The Preliminary Meeting.

6-stage process: (4) examination

4. Examination

- PINS has up to six months to carry out the examination.
- Starts the day after the Preliminary Meeting.
- IPs who made RR provide more details of their views in writing.
- ExA considers important and relevant matters, including IP representations, any supporting evidence, answers to ExA's questions.
- LAs heavily involved: Local Impact Report, Statements of Common Ground, responding to ExA questions: tight deadlines.

6-stage process: (4) examination

A written process

- **IPs** will have summarised concerns in **RR** – help to set agenda.
- Able to develop concerns more fully in written representations.
- Consider exploring common ground with other IPs.

6-stage process: (4) examination

A series of stages where further representations sought by ExA from IPs.

After preliminary meeting, ExA will publish a timetable which will set deadlines for –

- making written representations (**WR**),
- the ExA to ask questions in writing about any matter contained in the application, RRs, WRs, or anything else considered relevant, and
- applicant and IPs will be able to comment in writing on any RR, WR, or responses provided to written questions

6-stage process: (4) examination

- Timetable evolves during examination.
- Further deadlines will be set for additional rounds of questions, comments, hearings and written representations
- Deadlines are usually tight.
- Great effort required to deal with multiple (complex) matters of law and evidence arising in the limited time.

6-stage process: (4) examination

Key documents include –

- Local Impact Reports.
- Statements of Common Ground.
- Answering questions and responding to the Applicant's documents.
- Post-hearing representations following Issue Specific Hearings.

6-stage process: (4) examination

Local Impact Report (“LIR”)

- “a report in writing giving details of the likely impact of the proposed development on the authority’s area (or any part of that area)”
- Post-examination, ExA makes a recommendation to the SoS, who will make the decision on whether to make the DCO.
- In coming to a decision, SoS **must have regard** to any LIRs that are submitted by the deadline.
- Advice Note One: Local Impact Reports

6-stage process: (4) examination

Statements of Common Ground

DCLG Guidance describes it as a statement which –

- sets out any matters on which the applicant and another party (parties) agree
- identifies those areas where agreement has not been reached

The statement should include references to show where those matters are dealt with in the written representations or other documentary evidence.

If unsigned: won't carry weight.

6-stage process: (4) examination

Possible scope of work?

A303 Amesbury to Berwick Down Development Consent Order 2020 i.e. Stonehenge DCO

- 2,370 relevant representations (Sizewell: 1,281)
- 62 written representations
- **1,076 questions in the first round**
- 2 CA hearings, 11 ISHs and 4 open floor hearings
- Examination: 6 months; recommendation: 3 months; decision: 10.5 months
- 1,493 documents on PINS web page on the date of the decision (excluding RRs)

6-stage process: (4) examination

Preparing documents: key points

- The ExA will have to read 100s, if not 1,000s, of documents.
- Make ExA's life as easy as possible.
- Make documents as user friendly as possible.
- Number paragraphs and pages.
- Be as concise as possible; avoid repetition.
- Use short sentences and paragraphs / sub-headings.
- Avoid paper-chases: include links to other published material / docs in Examination Library.

6-stage process: (4) examination

Preparing documents: key points

- Be clear: explain what the problem is and what you want done about it. Present credible alternative.
- Show there is no technical impediment to your solution.
- Can you explain the cost of your solution?
- Avoid hyperbole.
- If you want the DCO to be amended, provide amended version of the provision (track changed) and Explanatory Memorandum.
- Likewise, provide preferred text if seeking amendment to one of the control documents.

6-stage process: (4) examination

Preparing documents: key points

Points to consider –

- Look for agreement – e.g. with other local authorities, statutory consultees.
- Persist with your best points (credibility).
- Co-ordination/communication within team is vital: huge volumes of documents so ensure evidence is not contradictory

6-stage process: (4) examination

Examination: key points

Be guided by what really matters (credibility) –

- Maintain dialogue with Applicant and encourage them to do the same.
 - Actively participate in the oral process where relevant to concerns.
 - **Be clear as to what you want.**
- Requirements?

6-stage process: (4) examination

Issue Specific Hearings

- Held to explore in detail a specific issue or set of issues e.g. DCO / S.106 agreement / impact or impacts on a particular location e.g. noise / traffic
- If you feel that a topic should be the subject of ISH, and is not, you can raise this at the PM in relation to the draft Ex Timetable
- **ExA unlikely to recommend non-confirmation on matter not sufficiently controversial to merit ISH**

6-stage process: (5) recommendation & decision

5. Recommendation and Decision

- ExA must prepare a report and recommendation to SoS, within 3 months of close of Examination.
- SoS then has a further 3 months to decide whether to grant or refuse development consent.
- IPS might be asked to respond to the SoS's questions before the SoS has determined the application.

6-stage process (6): post-decision

6. Post decision

- 6-week period in which SoS decision may be challenged (by JR) in the High Court.
- Commencement of development.
- District and County Councils discharge “requirements”.

6-stage process (6): post-decision

- Outstanding issues - ?
- Do you have a role post-examination / post-consent?

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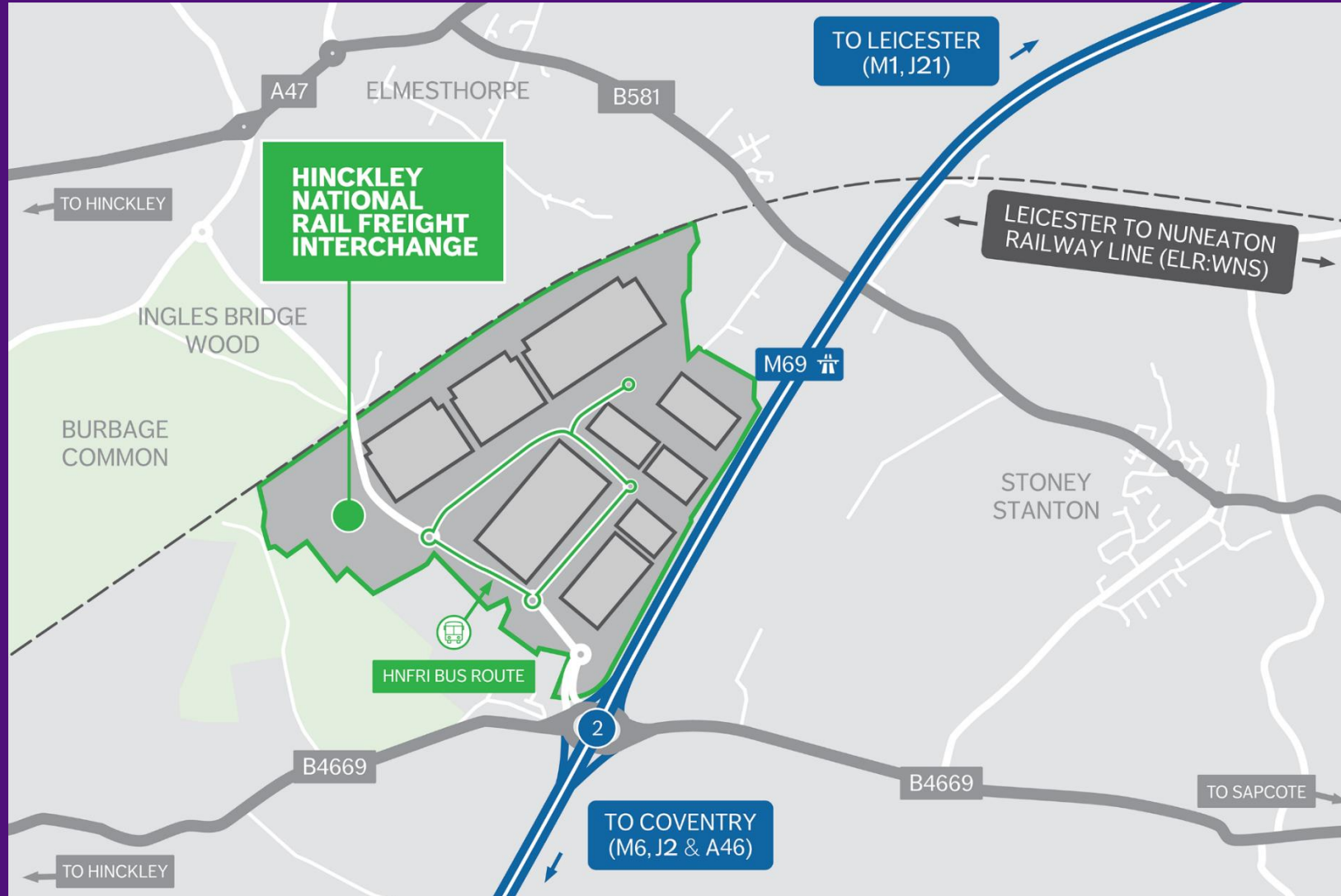
Experience of a Local Authority new to the NSIP process

Blaby District Council

Clementyne Murphy-Nelson

Ed Stacey

Hinckley National Rail Freight Interchange (HNRFI)



What is HNRFI?

Strategic Rail Freight Interchange

Distribution centre

- Railport
- 850,000 sqm warehousing
- J2 M69 improvements
- Link Road
- 23 hectares greenspace including Public Rights of Way



First thoughts

Collaborative approach

Internal Consultants

One full time Planning
Officer

Initial Planning
Performance Agreement

Partial delegation for
responses

Approach



Two full time
Planning Officers



Internal and
External
Consultants



External Legal
advice



Collaboration with
other Authorities



Utilise contacts in
other Authorities

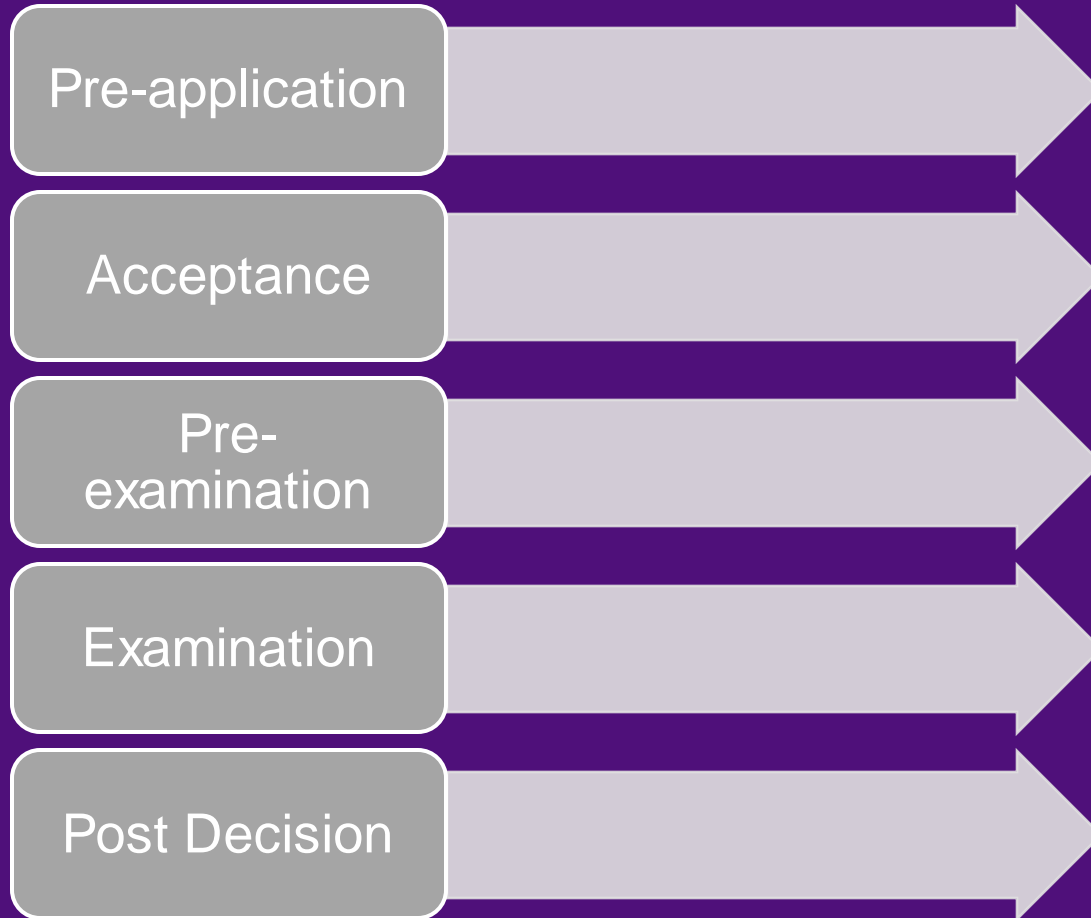


Communication



Governance, SLT
Elected Members
and Local Groups

The process



- 5 years (Late 2017 – Feb 23)
 - 3 consultations
 - Statement of Community Consultation
 - Change of Applicant
 - Long delays
- 2 months (Feb 23 – April 23)
 - 2 submissions
 - Adequacy of Consultation
 - Technical discussions begun in detail
- 5 months (April 23 – Sept 23)
 - Ramping up of workload and complexity
 - Additional Planning resource
- 6 months (Sept 23 – March 24)
 - Chaos...
 - Local Impact Report and Written Representation
- 10 years (Sept 24 →)

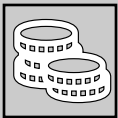
Cost



No fee for NSIP's ...



Planning Performance Agreement (PPA)



Council budget and reserves



Additional funding streams e.g. DHLUC Innovation and Capacity Fund

Lessons Learnt



Coordination



Cost



Governance



Chaos



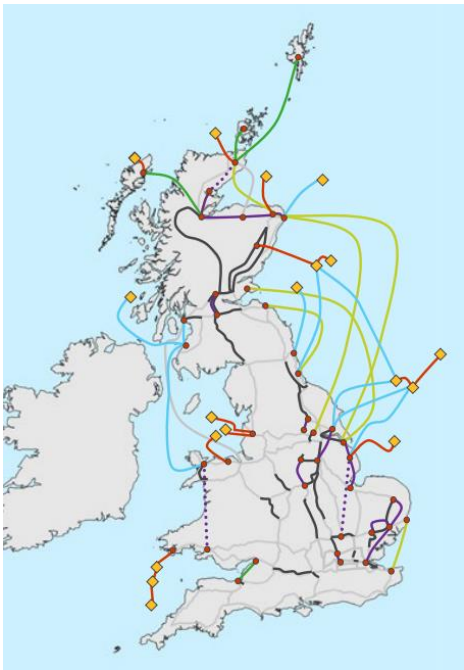
Collaborative
Working



Technical
Expertise



Communication



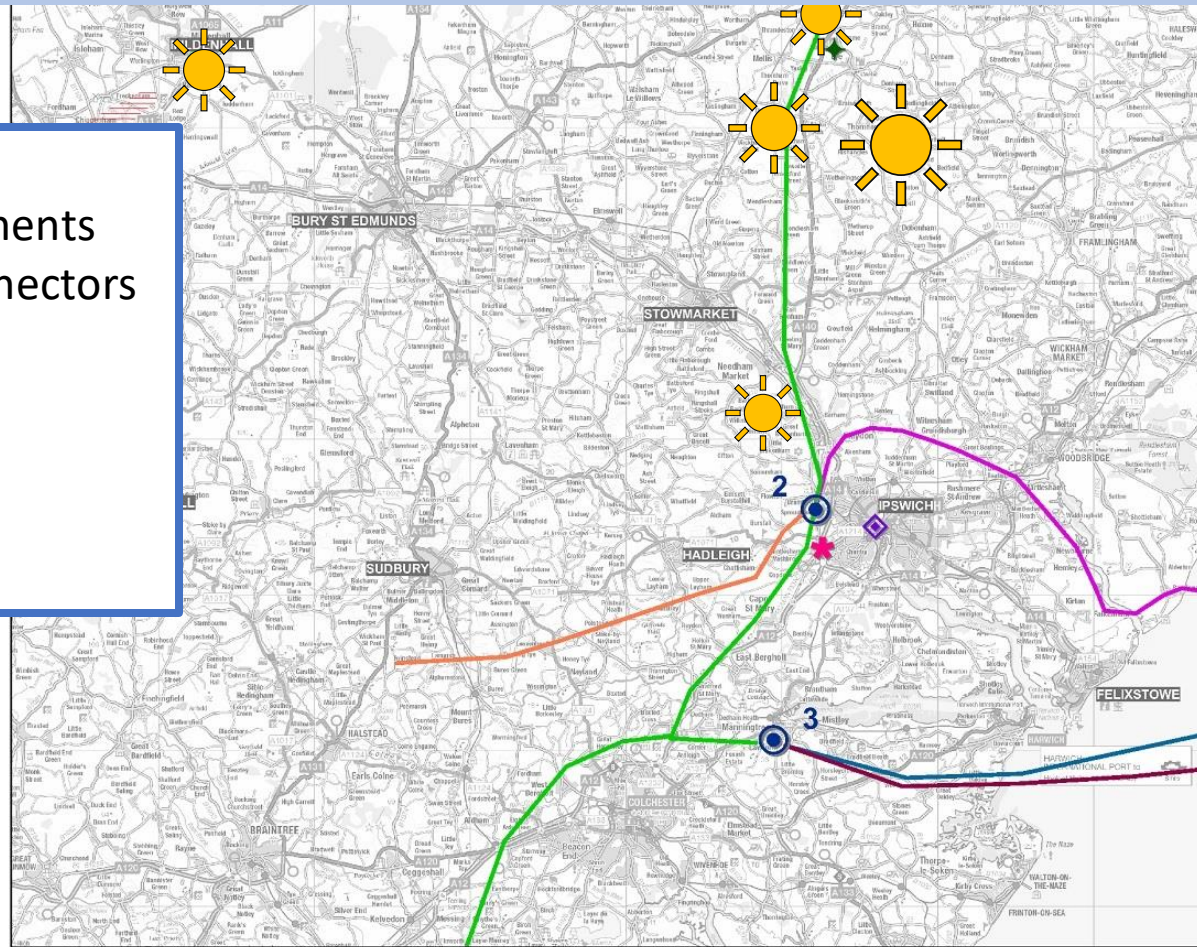
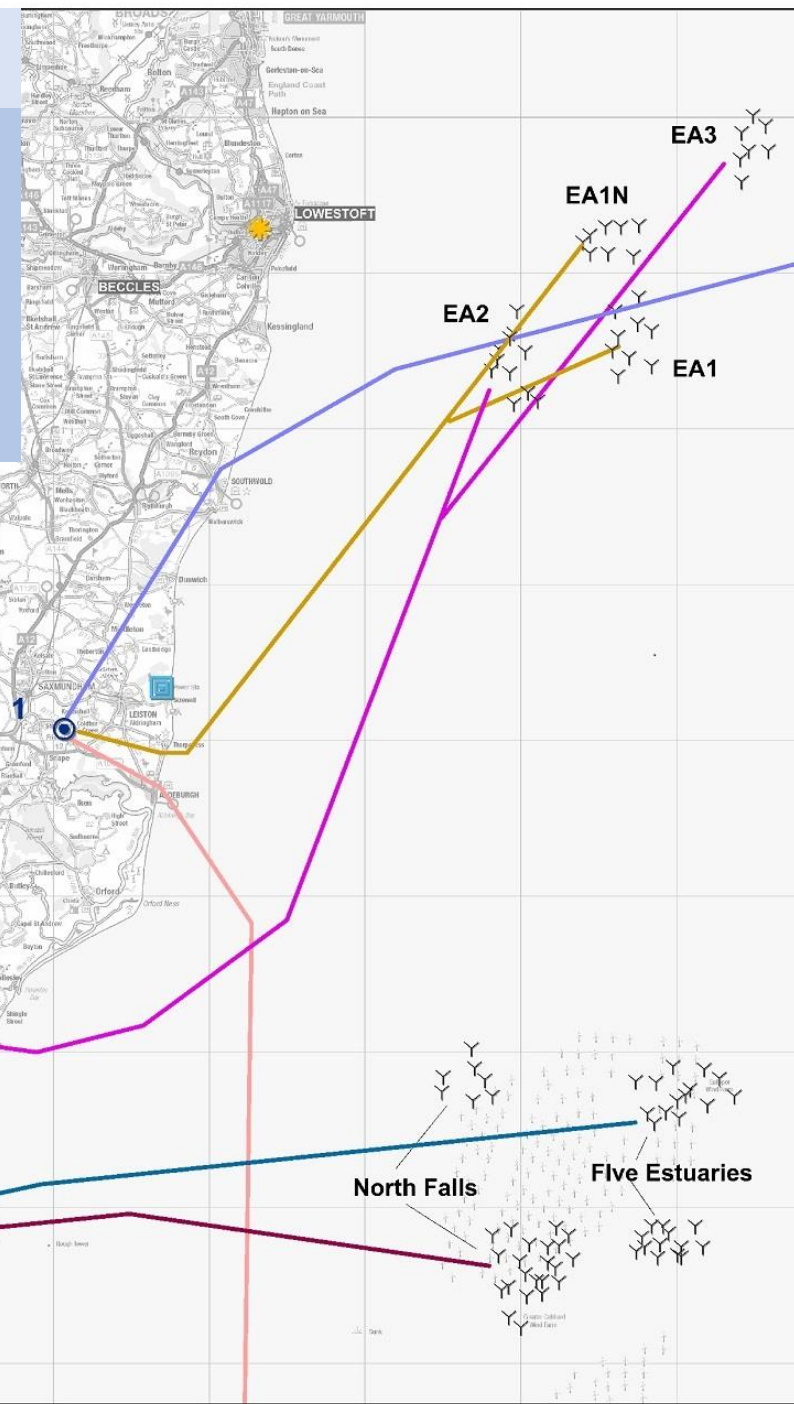
Nationally Significant Infrastructure Projects (NSIPs) – Top 10 Tips for local authorities

Michael Moll
Head of Programmes & PMO



Suffolk County Council – an NSIP Centre of Excellence

10 tips for local authorities, building on officer experience of dealing with ca. 19 NSIPs over the past 12 years, including dealing with Sizewell C.



- 1 nuclear power station
- 2 onshore grid reinforcements
- 3-4 sub-sea grid interconnectors
- 5 Offshore Wind Farms
- Up to 5 solar farms
- 1 gas-fired power station
- 1 river crossing
- 1 rail freight interchange

The NSIP challenges from a local perspective

Ever increasing urgency of national need for energy/ climate infrastructure.

A huge – and ever increasing - **NSIP pipeline.**

Every singly NSIP has **local impacts, complexity and controversies.**

Community Consent & capacity.

Cumulative impacts, dependencies.

Employment & skills shortages not only in construction.

Resourcing of public sector to respond.



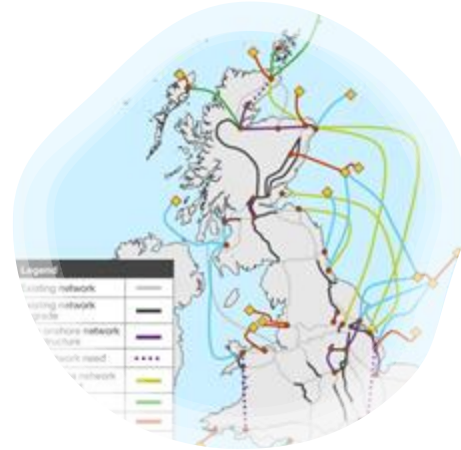
1. Understand limitations and opportunities of local authority role

- Not the decision maker
- Key statutory consultee BUT mostly no statutory duty to be involved
- Response can be much wider than with TCPA – community leadership, promoting community benefits in widest sense
- Option for more nuanced response

2. Be credible

Check: Are your responses...

- Strategy/local policy based?
- Not unduly questioning national policy?
- Evidence based?
- Realistic? (What can realistically be changed?)
- Consistent and coherent?



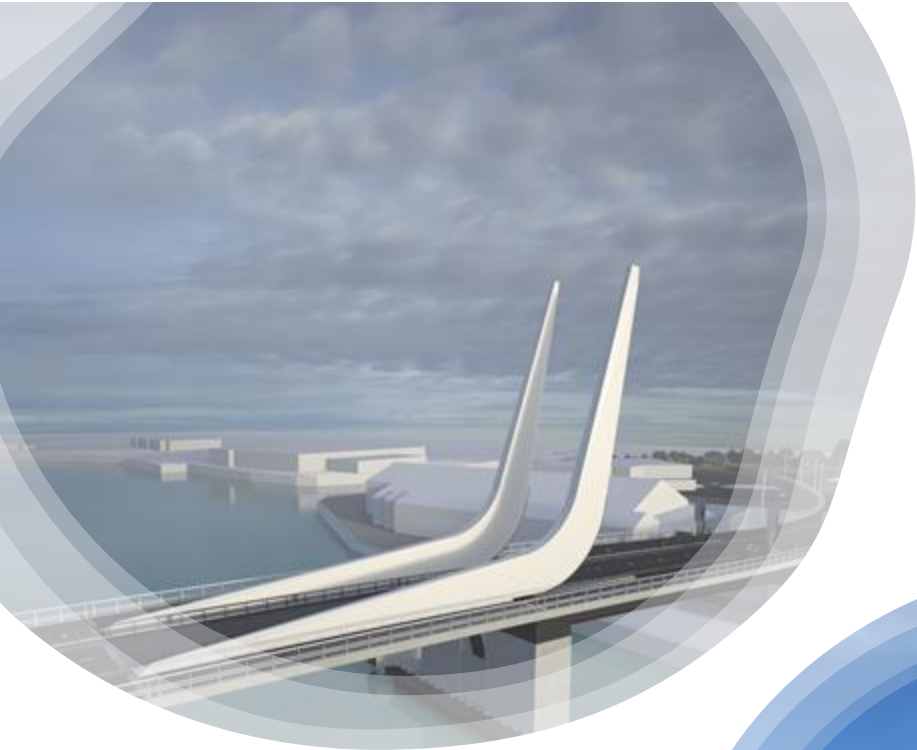
Suffolk County Council Approach: Change is inevitable, but cannot be at any cost

3. Engage with the proposals no matter what

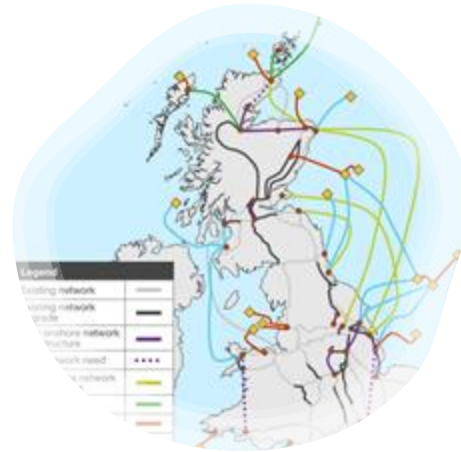
- Even if your administration is opposed to the scheme, constructively engage and make representations to raise specific issues and improvements
- This is your one chance to make the proposals better should the scheme be approved.



4. Be clear what you want – as early as possible



- Set out clearly what your interests, issues and concerns are
- Set out to the promoter what you wish to see changed / improved
- Succinct list of issues
- Be as specific as you can - if you can specify solutions, do so.



5. Ensure you have political mandate and delegations

- Ensure Councillors understand principles of previous slides
- How to get your mandate? Cabinet decision?
- Need clear mandate and delegations for examination as no time for further political decisions during examination – Relevant Representation stage?

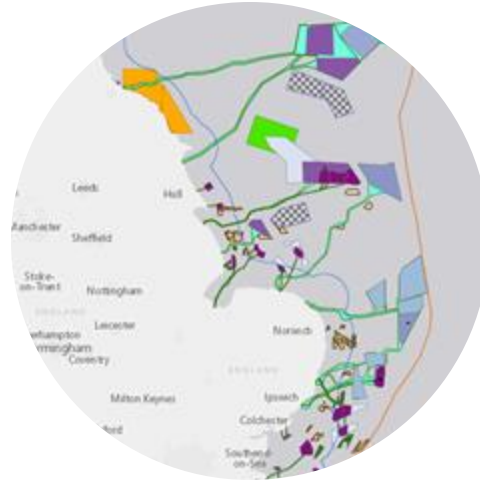




6. Make sure you have staff resources and PPA funding for these

- Aim for PPA from first engagement until completion – full cost recovery
- Don't under-estimate – these are very resource intense projects
- Programme approach
- Dealing with peaks and tight deadlines (particularly towards end of examination)
- Continuity of officers

7. Get organised from the start



- Huge number of documents to read, write, file – high complexity
- Document management approach
- Keep audit trail of evidencing issues raised with the promoter
- Aim to help Examining Authority – referencing, numbering etc.



8. Nurture relationships

... with promoter to instigate improvements (and remember you'll have to work with them for years!)

... with other local authorities – e.g. joint local impact report?

... with other public sector partners – can you make a stronger case together?

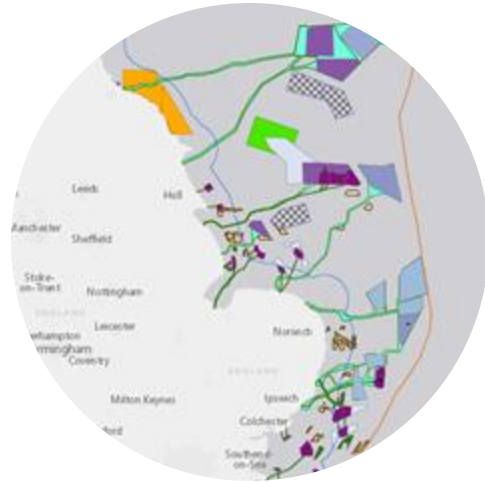


9. Empower communities

- Town and Parish Councils are important consultees in their own right (and independently of action groups)
- How can you support them? (Tell them about our [Town and Parish Council NSIP guide](#))
- Engage with community benefit proposals – lobby the promoter to put together package in partnership with local communities



10. ... and when you thought it's all over it only starts!



If and once a project is consented, be ready for considerable resource requirements.

- Ensure resources are secured through planning obligations
- Expect there to be changes – are you ready to deal with change management?

*Coming soon: A fully updated version of the NSIP
guide for Local Authorities, developed by Suffolk
County Council's NSIP Centre of Excellence*

Covering most of what you heard today

Thank you

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- Brings together local authority officers to share information, experience and practical support
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