Planning Reform Working Paper: Streamlining Infrastructure Planning

Historic England is the government's statutory adviser on all matters relating to the historic environment in England. We are a non-departmental public body established under the National Heritage Act 1983 and sponsored by the Department for Culture, Media and Sport (DCMS). We champion and protect England's historic places, providing expert advice to local planning authorities, developers, owners and communities to help ensure our historic environment is properly understood, enjoyed and cared for.

We welcome the opportunity to submit a response to the consultation on the Streamlining Infrastructure Planning Working Paper.

a. Would the package of measures being proposed in this paper support a more streamlined and modernised process? Are there any risks with this package taken as a whole or further legislative measures the government should consider?

The Planning Act 2008 introduced the Nationally Significant Infrastructure Project (NSIP) regime to provide a consistent, robust and quicker decision-making process for major Infrastructure. In general, we believe the NSIP regime has achieved this. Given the greater emphasis placed on infrastructure development as part of the government's drive for growth and clean power, and its ambition to determine 150 major infrastructure projects by the end of this Parliament, we believe some changes to the existing system are necessary to achieve this.

As the government's adviser on the historic environment, Historic England works to ensure the protection and enhancement of the historic environment is considered on all infrastructure projects, and that any changes do not have an unnecessary detrimental impact. Overall, based on the information provided, we believe the proposed package of measures has the potential to support a more streamlined process. However, some of the measures proposed could have unintended consequences and introduce less certainty and clarity, ultimately leading to longer timeframes and increased costs.

For example, we are concerned that Paragraph 9. d. 'Greener' appears to conflate 'nature' and 'environment' just with nature conservation through its reference to the Development and Nature Recovery working paper. Environment should also include reference to the historic environment and cultural heritage, not just the natural environment. Equating 'environment' with 'nature' in this way could leave heritage, especially non-designated heritage assets, exposed as a result of streamlining. We would welcome a clearer commitment to heritage to ensure its continued protection and enhancement in any streamlined system.

In developing measures to support a more streamlined approach it is imperative that the system is properly resourced across all key areas to ensure effective and timely delivery of projects.

We remain keen to work with government departments, applicants and other stakeholders to ensure new measures continue to take full consideration of the historic environment in any streamlined NSIP regime.

b. Are the proposed changes to NPSs the right approach and will this support greater policy certainty?

As the NPS provide the policy framework for NSIP decisions, Historic England agrees that it is vital for the policy position in each NPS to be updated regularly. Providing clarity and policy certainty for all involved is crucial and should help in making quicker decisions. The paper proposes a five-year cycle of updates which we consider to be appropriate but would welcome further clarity regarding the proposed procedures. We have the following points to highlight;

- It is unclear what would qualify the NPS as having been updated i.e. would any update, no matter how small or a reflective amendment (see below) qualify the NPS as being updated? Or will a NPS only be regarded as being updated following its five-yearly review? Clarification on this point in any subsequent material would be helpful.
- Paragraph 16 refers to the NPS updates reflecting wider government strategies including the 10-year Infrastructure Strategy and Strategic Spatial Energy Plan (SSEP) both due to be published later this year. The planning policy landscape is changing rapidly, with many anticipated reforms coming forward in the revised NPPF and the Planning and Infrastructure Bill. These are all running on different timelines which creates uncertainty around how well they will reflect each other and where any conflicts may lie. Historic England is consulted on all these reforms however and we are working to provide consistent and constructive advice to help avoid any conflicts arising and therefore reducing the risk to deliverability of government aspirations. It may be beneficial to have a clear map of how the different documents and proposals are envisioned to work together, along with a timeline. There are numerous changes proposed across planning and infrastructure planning need to be factored in - doing so would help create greater clarity and certainty for all stakeholders.
- Paragraphs 18- 20 appear to propose a more straightforward approach to consultation and publicity regarding updates to the NPS. These paragraphs also provide details on a new procedure called ‘reflective amendments’. This procedure appears to be a sensible approach, but we are unclear what, if any consultation will be held on these amendments. We stress the benefits in early engagement and consultation to help scope out and avoid any policy issues from the outset when it comes to preparing the new assessment framework, and when it comes to site specific engagement. We would welcome more clarity around how any amendments would fit within the regular five yearly update. Based on our understanding of the working paper there could be two possible processes. Firstly, incremental amendments during any five-year period which will ultimately constitute a revised NPS, or secondly there will be a comprehensive review of the NPS every five years, regardless of any amendments. Further explanation would be welcomed.
- Paragraph 19 outlines the reflective amendment procedure. It would be helpful to have some indication of how many reflective amendments a NPS can have and at what points they can be made so the full scope of individual amendments can be understood as a whole. Doing this will help to avoid any cumulative impacts that may alter the thrust of the policy objectives and create conflicting policy clauses.

c. Do you think the proposals on consultation strike the right balance between a proportionate process and appropriate engagement with communities?

Historic England welcomes, and agrees with, the commitment to pre-application consultation. We believe this is a vital component of the NSIP regime. We adopt a proportionate approach to the level of engagement required based on our understanding of the scheme and its potential impacts on the historic environment. Where this is done impacts on the historic environment can be identified and appropriate solutions explored early in the application process, or issues can be scoped out entirely. This enables us to work with applicants to de-risk applications in respect of the historic environment. It is important to recognise applicants (or their representatives) may vary in terms of their experience and/or willingness to engage on matters relating to the historic environment. Early engagement enables us to encourage good practice, provide advice and assist in the development of appropriate requirements.

However, we challenge the statement at paragraph 26 b which states “there is little incentive for statutory consultees...to resolve issues proactively and early”. Historic England works constructively to enable an efficient and streamlined application process through early engagement by seeking resolution or compromise ahead of hearings. To help achieve this we are already engaging with the ‘principal areas of disagreement’ approach, building on the use of the Statements of Common Ground. Yet, it should be recognised that this will not always be possible as there will inevitably, but rarely, be some instances where issues are difficult to resolve and will necessarily require a ruling by the Examining Authority.

The paper proposes four changes to improve consultation. Paragraph 28a. refers to an outcomes-based application acceptance requirement. It is unclear if this relates to Environmental Outcome Reports (EORs), about which very little is currently known, or an outcomes approach to policy making generally (which we feel has the potential to be helpful). Currently NSIP consenting for heritage is often process based which works reasonably well in that acceptable outcomes for heritage arise from adhering to established processes. Switching more directly to outcomes could work well if the outcomes are suitably framed e.g. outcomes that address (physical) conservation, advance knowledge, and be based upon public engagement. Yet, if outcomes are framed by simplistic and partial quantitative measures (e.g. reduction in number of Heritage at Risk, which are limited to designated assets by definition), they could lead to detrimental impacts upon to the historic environment. We would be happy to advise on the development any outcomes for heritage. However, in the absence of more information it would be premature to take a definitive view on the application acceptance requirements as currently described. We would be pleased to discuss this matter further.

Paragraph 28a. seeks to allow the Planning Inspectorate to consider minor changes or updates during the post-acceptance period. This appears to be a practical approach subject to clear guidelines, including the type of minor changes/updates allowed, for example those which could involve additional impacts on the historic environment. It should be made clear that this does not provide another route for applicants to submit additional information which was not previously available.

d. Do you agree with the proposal to create a new duty to narrow down areas of disagreement before applications are submitted? How should this duty be designed so as to align the incentives of different actors without delaying the process?

Historic England recognises that the identification of areas of disagreement early at the pre-application stage can help to speed up process and lead to positive outcomes for the

environment and local communities. We already engage in principal areas of disagreement statements, with the aim of resolving matter before hearing stage. To this end we see merit in the mechanisms highlighted in paragraph 28b to do this.

There is also a broader point to be made on how paragraph 28b addresses the potential changes. It encourages all parties to identify and narrow down any areas of disagreement without recognising the remit of those parties. For example, Historic England's remit is to help people care for, enjoy and celebrate England's historic environment. As a result, we have a duty to ensure heritage policy and best practice is being met. There may be instances where narrowing down may compromise our remit and a suitable balance will need to be weighed by the Examining Authority. Any new duty should ultimately aim to ensure that all parties are engaged to narrow areas of disagreement.

We suggest that ways to monitor or review compliance with any duty are developed in tandem with the duty, and that consultation is sought with stakeholders. It may be the case that changes to monitoring may have knock-on impacts upon the capacity of statutory consultees and may create additional strain on overstretched resources.

f. With respect to improvements post-consent, have we identified the right areas to speed up delivery of infrastructure after planning consent is granted?

We are broadly supportive of this approach. In our experience, for example, the granting of a deemed marine licence as part of a DCO generally works well. As a result, we believe the adoption of a similar process for all infrastructure projects has some merit, especially as this will encourage early engagement. Paragraph 32 indicates that a set of conditions will be set out in legislation to enable applicants to seek a deemed licence. We seek assurance that there will be consultation on these conditions and Historic England would be pleased to advise in respect of the historic environment.

The changes detailed in paragraphs 33-34 which allow for a draft order and correction of minor typographical/referencing errors are sensible. This would allow the applicant to respond more easily for requests to alter things based on ongoing discussions.

Proposals to remove the legislative distinction between material and non-material changes post-consent and replacing it with a single process as per Paragraph 37 appear to adopt a pragmatic approach. However, this could result in additional information being required in relation to non-material changes which would otherwise not be required, and for a lack of information being provided when dealing with material changes. Clearly, it will be important to get the balance right. We note that further guidance is proposed, and we would be pleased to assist in its development.

g. What are the best ways to improve take-up of section 150 of the Planning Act? Do you think the approach of section 149A has the potential to be applied to other licences and consents more generally?

Please see our response to question f.

h. With respect to providing for additional flexibility, do you support the introduction of a power to enable Secretaries of State to direct projects out of the NSIP regime?

Are there broader consequences for the planning system or safeguards we should consider?

Historic England recognises the desire to create a more flexible regime but, based on the information available at this stage, we have some reservations about the efficacy of what is being proposed. Paragraph 42 states that there are 'rare occasions' where it is unclear if projects sit above or below the NSIP threshold. We question whether a change to a well-established system at this time would be the most effective way to provide for these occasions.

The Planning Act 2008 was introduced to provide clarity and certainty on which projects would be considered via the NSIP or TCPA process. As policy and technologies change, we agree that NSIP/TCPA thresholds may need to be revised but believe that enabling what is essentially an 'opt-out' option decided on a case-by-case basis would undermine the certainty that exists currently. Doing so risks adding an extra level of complexity and potentially introduces inconsistences across regions and sectors.

Paragraph 44 refers to the Secretary of State preparing criteria for applicants to opt out of the NSIP regime. Until we have a better understanding of what these criteria may be, it is difficult to fully understand the implications of what is proposed. If variations are introduced, it is vital that that there is still a requirement for an equivalent pre-application consultation process involving statutory consultees as exists in the NSIP regime.

Clarity is also sought on two further points. Firstly, will cost recovery still be applicable for those projects the Secretary of State decides can 'opt out' of the NSIP regime? Secondly, it would be helpful to understand how the opt-out option will affect the ambition to determine 150 major infrastructure applications during the lifetime of the current parliament. Should the options be introduced will the 150 applications be reduced, or will some criteria of what constitutes a 'major infrastructure application' e.g. thresholds be introduced?

i. Do you believe there is a need for the consenting process to be modified or adapted to reflect the characteristics of a particular project or projects? Have we identified the main issues with existing projects and those likely to come forward in the near future? Can we address these challenges appropriately through secondary legislation and guidance; or is there a case for a broad power to enable variations in general? What scope should such a power have and what safeguards should accompany it? If a general process modification power is not necessary, what further targeted changes to the current regime would help ensure it can adequately deal with the complexity and volume of projects expected over the coming years?

Historic England believes there is potential for the consenting process to be modified to better reflect the nature of projects coming through, yet this should be done within the NSIP regime. This is now a well-established, understood and robust regime which offers a level of certainty to applicants, consultants, and consultees.

The paper identifies three types of projects where variation of the standard process could be adjusted. Paragraph 51a refers to solar projects and suggests these tend to be compact, single site developments. Whilst we agree solar projects are often more straightforward than other NSIP projects, especially linear projects such as road, rail or electricity transmission, larger solar projects can cover numerous sites and consequently have wider impacts on heritage assets and their setting.

Whilst we see merit in introducing statutory guidance as outlined in paragraph 57, we would like the opportunity to discuss this further with government to fully understand what is being proposed and to provide constructive advice. Given the irreplaceable and unique nature of heritage it can be challenging to provide a standardised approach, and a one-size-fits all strategy may hinder flexible, positive solutions being brought forward. We continue to work with various sectors to improve understanding of the importance of and impacts upon heritage assets. We are currently working with Solar Energy UK to address issues surrounding archaeological assessments and extent of evaluation.

Based on the information provided, the proposals outlined in paragraph 58 a and b to update the transport consenting regimes appear to be sensible. We welcome further details in due course and will be pleased to work with government in the development of these proposals to ensure impacts on the historic environment are considered fully.

Historic England

Policy and Evidence

12th March 2025