Planning Reform Working Paper: Streamlining Infrastructure Planning[1]

InfrastructurePlanning@communities.gov.uk 26 Feb

Survey: https://www.gov.uk/government/publications/planning-reform-working-paper-streamlining-infrastructure-planning

Questions

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?*

Whilst they may result in a more streamlined process, we do not agree that the changes proposed will meet the objective to: "*deliver a faster, more certain, and less costly NSIP regime, thereby ensuring it can deliver high quality infrastructure*". Nothing proposed will ensure high quality infrastructure, nor successful NSIP initiatives.

To achieve that objective the package of measures should ensure more focus is given to the genuine consideration of alternative options, realising the highest value for public money and securing the most benefits. The recent decision to invest £22bn in unproven technology solutions to capture and store carbon, when the evidence suggests that it would be much more cost and environmentally effective to invest in the restoration of our peat mosses, is a clear example of failure to achieve that objective. A failure which will not be addressed by any of the current proposals. Another example is the recent report on Improving Safety on the A66[2], which states (p6) that "*The RSF report recommends a UK wide programme of safety schemes totalling £2.5bn. The £1.5bn cost of the A66 would pay for 60% of the RSF programme. This would achieve far greater reductions in collisions, including fatalities, across the UK with a higher rate of economic return*".

There are also enormous risks associated with aiming for speed for speed's sake, without thinking about what outcomes are required. Given the aim is to achieve an "*outcomes-focused system*", it would seem obvious that, in fact, what matters is getting the right infrastructure in the right place, with minimal harm to the environment, communities and the local economy where that infrastructure is to be located.

Yet, the proposals, as set out, do nothing to aim for best outcomes or to ensure that alternatives are appraised, costed and consulted on at an early stage. HS2 should provide some excellent lessons learned. In terms of route options, for example, the insistence that it was necessary to create considerable harm to the environment, people's homes and their livelihoods resulted in a project that should have been championed by all, being rejected by many communities as an undesirable scheme being foisted onto them. Discarding the dictatorial mindset, with its ever-increasing costs, and collaborating with communities and environmentalists to agree the least damaging route options would have delivered a faster, more certain, less costly, NSIP scheme that provided the best outcomes for all stakeholders.

There is also a risk that, by continually tweaking the system to give project promoters (generally private companies) the upper hand, public dissatisfaction with the planning system will increase significantly.

[1] Planning Reform Working Paper: Streamlining Infrastructure Planning - GOV.UK
[2] https://transportactionnetwork.org.uk/wp-content/uploads/TAN-A66-Report-web.pdf

It should be noted that public survey after public survey (we can supply on request) indicates that voters want to see the government protect nature, food security and the countryside. Speeding up infrastructure delivery is not a public priority – they want it to be right – not quick.

Achievement of the government's aims could be accelerated by insisting on adherence to the four key pillars set out below:

1. The Treasury Green Book and the associated 'Enabling a Natural Capital Approach' (ENCA[3]) guidance for the appraisal of alternatives.
2. The Gunning Principles[4] of consultation, to ensure consultations are held **before** infrastructure decisions are made.
3. The Mitigation Hierarchy[5], which requires avoidance of environmental and ecological harm.
4. The introduction of a Green Claims code[6] for the public sector, that should apply to all documentation and processes. The principles should be aligned with those that apply to other businesses, including:

    - claims must be truthful and accurate
    - claims must be clear and unambiguous
    - claims must not omit or hide important relevant information
    - comparisons must be fair and meaningful
    - claims must consider the full life cycle of the product or service
    - claims must be substantiated.

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

We welcome some of the proposals:

- reviewing National Policy Statements (NPSs) on a more regular basis and making it easier to update them in the interim
- supporting delivery of infrastructure post-consent
- allowing for appropriate flexibility in the process to be applied to projects, where this is merited
- strengthening statutory guidance to ensure clarity over what is and is not required.

It is imperative, however, to ensure that communities can provide input to the process at all stages of a project, especially if there are concerns that need raising. Community stakeholders, whether statutory or not, must be able to intervene post-consent as well as pre-consent. The policies should ensure that those community concerns must also be formally addressed. Communities should be clear about the reasons why their comments have not been taken on board, as well as any confirmation that they have.

Genuine consultation should not be seen as a burden. The Gunning Principles, mentioned above, provide clear guidance to the approach that should be taken. Furthermore, communities provide access to an extensive talent pool, their inputs and insights should be welcomed by any initiative.

---

[3] Enabling a Natural Capital Approach (ENCA): Guidance - GOV.UK
[4] https://www.local.gov.uk/sites/default/files/documents/The%20Gunning%20Principles.pdf
[5] https://www.gov.uk/guidance/natural-environment
[6] https://www.gov.uk/government/publications/green-claims-code-making-environmental-claims/environmental-claims-on-goods-and-services

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

No, the proposals do not confirm that any consultation **MUST** adhere to Gunning Principles. This would require engagement with communities from the earliest stage in the process, not just a high-level interaction on, for example, the design of a project, by a promoter after a decision has already been made. The system lacks trust, and it is not performing as it should do.

The NSIP process must insist on an 'Engage, Deliberate, Decide' approach instead of the currently favoured 'Decide, Announce, Defend' method, which wastes time and is antagonistic and controversial.

Furthermore, the Treasury Green Book and ENCA guidance must be followed for NSIPs to ensure appraisal of all alternatives and quantification of socio-economic and natural capital impacts of a project and its alternatives. Alternatives must be presented for consultation and community submitted options must be taken seriously. Not only would this speed up infrastructure delivery but it would ensure the best outcomes for everyone and the environment.

Communities will always seek to see the mitigation hierarchy being applied rigorously. The avoidance of harm is the first requirement, not the creation of new habitat elsewhere to make up for harm caused.

There is also a risk that communities are not privy too or involved with discussions with PINS until too late (submission of Development Consent Order, DCO), by which point problems are 'baked in' and cannot be changed. This will result in challenges and delays. It is imperative that PINS involves communities in discussion from the very earliest opportunity so that there is a chance to resolve issues and create a better DCO.

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?

Yes, this is sensible and should happen as early as possible. It is, however, imperative that this is not restricted to statutory consultees.

This approach could prevent years of meaningless consultations.

To give an example, in the case of National Grid's Norwich to Tilbury consultation, there have now been four consultations since 2022 and at each stage communities have had to fundraise for expert advice but at each stage National Grid has ignored concerns and ploughed ahead with its pre-determined project despite four legal opinions pointing out deficiencies. It would have been invaluable for us to have early discussions with the Planning Inspectorate (PINS) to point out the flaws in the proposal so that PINS could intervene.

As in question c, we seek the earliest possible conversations with PINS for communities so that concerns can be raised before problems are baked into a DCO.

e. Do you support the changes proposed to Category 3 persons?

We can understand why this proposal has been made. We do believe, however, that Category 3 persons should be notified at Statutory Consultation stage, by which point a project is at a high stage of refinement.

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

No comment other than to note that non-statutory consultees must always be entitled and able to raise concerns with the relevant authority.

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?

Whilst the consenting authorities are best placed to comment on this aspiration, we believe an insistence on appropriately skilled programme managers, who engage early with all necessary stakeholders would support the Government's aim to avoid delays. Again, HS2 should provide some lessons learned on this. The eyewatering salaries (and bonuses) paid on that project should have ensured much better project performance!

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?

Yes.

Safeguards: Communities must be considered on a par with statutory stakeholders when they have a formal group established and wish to engage in the process. Community groups bring invaluable knowledge, expertise and insights and should be valued as a key part of the process.

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?

Yes, the consenting process should be modified or adapted to reflect the characteristics of a particular project or projects. One aspect of this is ensuring that the initiative(s) reflect all national strategic intentions – not just cherry-picking those which support the outcome the applicant desires. This would include, for example, taking into consideration the Government's aspirations on Net Zero, when considering whether the initiative will result in the right outcomes. Transport infrastructure should, for example, be focused on sustainable transport modes, not new roads or additional lanes on existing motorways.

There should also be a clear understanding of what should happen in the event of potential cost escalation or overrun, especially if the public purse would be vulnerable to significant additional funding requests to ensure a particular project can be delivered.

Health and safety aspects must be given a high priority in all schemes, particularly those which may leave communities vulnerable to, for example, flooding, fires and/or toxic fumes.

The cumulative impacts of all development in a locality must also be considered in all schemes - air, noise, light, vibration and water pollution, for example, along with carbon emissions, including during construction. Whilst individual initiatives may consider these issues to be "Negligible" (or Not Significant), the combined effect of all developments on both human and wildlife populations could be considerable and appears to be frequently understated.

Furthermore, if the government is seeking an 'agile' system, lessons from the private sector may be useful. The 'agile' approach requires flexibility, refining and improving the project deliverables through iterative interactions, emphasising collaboration with all stakeholders and incorporating a focus on lessons learned and continuous improvement. To achieve that agility, schemes should be scaled to ensure the risks are manageable, environmental harms are minimised, and the articulated benefits are credible.

If outcomes-based judgements are to be the order of the day, better outcomes in the NSIPs process would be achieved by the government insisting on adherence to the four key pillars identified in our response to question (a) above.