

# NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS: BUSINESS & COMMERCIAL DEVELOPMENT

**IN 2013, THE GOVERNMENT INTRODUCED LEGISLATION TO ALLOW THE SECRETARY OF STATE TO DIRECT 'BUSINESS OR COMMERCIAL' PROJECTS INTO THE NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS (NSIP) REGIME. THE LEGISLATION APPLIES TO ENGLAND ONLY, BUT DIRECTED PROJECTS ARE ABLE TO FOLLOW A STRICT APPLICATION PROCESS TOWARDS SECURING DEVELOPMENT CONSENT, WITH THE ADDED BENEFIT OF ADDITIONAL STATUTORY POWERS AND FIXED DECISION-MAKING TIMESCALES.**

Although the Government has defined the broad categories of project that fit into 'Business or Commercial' projects, there are no statutory thresholds for what makes the project nationally significant. This means that applicants must make the case to the Secretary of State that a project is potentially nationally significant and merits direction into the NSIP regime.

This briefing note therefore sets out the broad thresholds and key considerations when looking to make a request for a Secretary of State direction.



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## NATIONAL INFRASTRUCTURE DEVELOPMENT CONSENT PROCESS

The 2008 Planning Act established a new process for nationally significant infrastructure projects (NSIPs), with key features including:

- Creation of a 'Development Consent Order' (DCO) granting powers including planning permission and potentially other consents.
- The ability for applicants to prepare the draft DCO they want consented.

- A statutory emphasis on pre-application engagement with local authorities, statutory bodies and local communities.
- The potential to request compulsory acquisition of rights and / or land within the DCO.
- Statutory timescales for assessing and deciding applications.

The process is broken down into 6 distinct phases:



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More detail can be found in our briefing note entitled 'Nationally Significant Infrastructure Projects: An Introduction'.

## Prescribed Categories

The prescribed categories are:

Category	Indicative threshold
Office use	No less than 40,000m2 GIA
Research and development of products or processes	No less than 40,000m2 GIA
An industrial process or processes	No less than 40,000m2 GIA
Storage or distribution of goods	No less than 40,000m2 GIA
Conferences	No less than 40,000m2 GIA
Exhibitions	No less than 40,000m2 GIA
Sport	No less than 100 hectares / no less than 40,000 seats for stadia
Leisure	No less than 100 hectares
Tourism	No less than 100 hectares
The winning and working of minerals, not including peat, coal, oil or gas.	Strategically important industrial mineral or over 150 hectares surface or underground area

## MAKING THE CASE

There is limited guidance on how the Secretary of State will make a decision and limited precedence with only two projects – The London Resort, Ebbsfleet and The International Advanced Manufacturing Park, Sunderland - applying for and receiving directions to date under this legislation<sup>2</sup>.

In broad terms, the Secretary of State will consider whether the project falls within one of the prescribed categories and will consider “all relevant matters” for whether a project is of national significance.

**Relevant matters** include significant economic impact, number of local authority areas affected, the physical size of the proposal and any relationship to the delivery of other nationally significant infrastructure projects or other significant developments.

The overall theme is one of ‘wider than local impact’, and the more compelling the evidence, the stronger the case, so there may be other factors that support the core relevant matters set out above.

### The London Resort, Ebbsfleet

Directed into the NSIP process as a mainly leisure and tourism development, the Secretary of State considered the project to be of national significance due to its size (understood to be approximately 210,000 sq. m. integral leisure + other uses), its impact on a wider-than-single local authority area and significant economic impact which could drive economic growth on a more than local scale.

### International Advanced Manufacturing Park, Sunderland

Although this is primarily a manufacturing project, the Secretary of State noted in the direction the project’s research and development, storage and office uses, which enabled the project to be considered under the ‘Business or Commercial’ banner.

The project is understood to comprise approximately 260,000 sq. m total floorspace, along with infrastructure and services. In determining its national significance, the Secretary of State recognised the same factors as The London Resort, namely significant impact on a wider than local authority area, physical size and its role as a significant economic driver.

To date, the Secretary of State appears to give weight to both wider economic impact and the ability of the project to drive the economy. Evidence to demonstrate a relationship to, and ability to implement the Government’s Industrial Strategy and the work of the National Infrastructure Commission also add weight to the case of a wider than local impact. Although these won’t carry the same weight as the National Policy Statements equivalent to those for energy and transport, these represent national policy and direction of travel in relation to Business or Commercial projects.

There is no formal consultation process relating to a direction decision, however. The Secretary of State will consider any matter they view to be relevant, which raises the prospect of taking representations from other parties into account.

The Secretary of State will take into account the potential for the scheme to benefit from the range of consents that can be included in a development consent order, for example planning permission, compulsory acquisition and relevant highways orders. The Secretary of State will also take into account whether the scheme can be brought in as a single DCO application with another NSIP.

## EXCLUSIONS

### Housing

The Government has excluded certain NSIP. However, it can allow infrastructure-related housing of up to 500 units<sup>3</sup> where this housing is functionally or geographically linked.

The Secretary of State will not take housing into account when deciding whether a business and commercial scheme should be directed in to the DCO process.

### Peat, coal, oil and gas, including fracking

The government currently considers these to be the responsibility of the minerals planning authority onshore, and the Department for Business, Energy and Industrial Strategy offshore.

However, it would be open for an applicant to make the case under section 35 of the Planning Act for a project under these categories to be directed in as an Energy project rather than a Business or Commercial project.

### Retail

The government will consider proposals that include an element of retail but currently considers retail-led developments should in general be determined by the local planning authority. However, this is not a cast-iron exclusion and there may be scope for exceptional projects with significant retail, particularly where this is consistent with development plan allocations / with local authority support.

## APPLYING FOR A DIRECTION

Procedurally, an application is made directly to the Secretary of State for Communities and Local Government. Advice can also be sought from the Planning Inspectorate however they may be under obligation to publish any advice they give on directions.

There is a statutory 28-day time limit for the Secretary of State to make a decision provided there is sufficient information on the nature of the project and its size, the relevant local authorities affected and justification as to why it meets the requirements.

Once directed in to the DCO regime, all the procedures and requirements around consultation and quality of

the application apply. Any applicant considering the national infrastructure route via a SoS Direction would be advised to record its early engagement and survey work in case it can be used in support of a DCO application.

### Local authority relationships

The designation of a project as a nationally significant infrastructure project places different requirements and expectations on local planning authorities. They still play a key role in advising on impacts and consultation approaches, as well as on the application of the development plan and other local policies. However, the decision-making function moves to the Secretary of State, and choosing to go down this route brings additional considerations for applicants.

The resource pressures for local authorities also change, as the Planning Inspectorate are likely to seek both written and oral representations, including a Local Impact Report and local authority views on the detail of the draft DCO. The use of Planning Performance Agreements offers applicants and local authorities the ability to agree expectations and manage resources in a more structured way.

### London

In short, the Mayor of London has significant planning powers over applications of potential strategic importance and the government does not wish to interfere with those. However, if it received a direction request for a project in London, it would need the agreement of the Mayor of London before issuing a direction. This should be obtained by the applicant before a direction is requested.

## IN CONCLUSION

The NSIP regime remains complex and continues to be tested and tweaked as projects progress through it. As such our best advice is if, having read this Guidance Note, or our others on this topic, you are still unclear as to how the NSIP process might be applied or its relevance to your proposals, please do contact Ben Lewis or Tom Carpen in our Infrastructure Team, who will be more than happy to offer some advice.

<sup>1</sup> [Growth and Infrastructure Act 2013](#) and [Infrastructure Planning \(Business or Commercial\) regulations 2013](#)

<sup>2</sup> See the [Secretary of State direction letter](#) for the London Resort (Formerly London Paramount) and the Secretary of State direction letter for the [International Advanced Manufacturing Park](#).

<sup>3</sup> There are limitations and exceptions to this number and any applicant would need to justify that housing is related to the main infrastructure project, and justify the provision and its location. Further information is in the separate Housing and National Infrastructure briefing note.

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