



Department for  
Communities and  
Local Government

# Major infrastructure planning: extending the regime to business and commercial projects

Summary of responses and government response

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# Introduction

1. On 6 September 2012, the Prime Minister and Deputy Prime Minister set out a major package of reforms to housing and planning to help create the conditions for economic growth. This announcement included a commitment to extend the nationally significant infrastructure regime to business and commercial projects which has now been achieved through the Growth and Infrastructure Act 2013, which received Royal Assent on 25<sup>th</sup> April 2013.
2. The extension of the regime to business and commercial projects will enable developers of certain projects to 'opt-in' to the nationally significant infrastructure planning regime, where the projects are of national significance. The benefits of the nationally significant infrastructure planning regime includes statutory timetabling which ensures that a decision will be made within 12 months from the start of the examination, and the 'one stop shop' approach to development consent – a Development Consent Order automatically removes the need to obtain several consents that would otherwise be required for development including planning permission, Green Belt consent, Listed Building consent and Ancient Monument consent. A Development Consent Order may also remove the need to obtain other consents on a case by case basis.
3. Applicants will also be able to benefit from the new Consents Service Unit which will improve co-ordination and communication between the Planning Inspectorate, applicants and consenting bodies. This Unit is intended make the consents process more efficient, whilst retaining the technical expertise with consenting bodies such as the Environment Agency and Natural England.
4. On 22 November 2012, the Department for Communities and Local Government published a consultation seeking views on the detail of the above proposals which, following Royal Assent, need to be taken forward via secondary legislation. In particular, the consultation asked for views on:
  1. a proposed list of development types.
  2. whether thresholds should apply and, if so, whether those in the consultation document were appropriate?
  3. our assessment of the factors that the Secretary of State would need to take into account.
  4. whether retail projects should not be a prescribed business or commercial project?
  5. whether a National Policy Statement (or Statements) should be prepared for the new business and commercial category; and
  6. whether there were any other comments on the proposals.

5. The consultation document also included at Annex A the following table which set out proposed types of development and possible thresholds.

Annex A: Proposed types of development and thresholds

Type of Development	Where the project meets the following threshold
Offices and research and development facilities	Over 40,000m <sup>2</sup> gross internal floorspace
Manufacturing and processing proposals	Over 40,000m <sup>2</sup> gross internal floorspace
Warehousing, storage and distribution	Over 40,000m <sup>2</sup> gross internal floorspace
Conference and exhibition centres	Over 40,000m <sup>2</sup> gross internal floorspace
Leisure, tourism and sports and recreation .	Area – over 100 hectares  Sports Stadia where the seating capacity is a minimum 40,000 seats
Extractive industries (mining and quarrying). Including proposals for:  Deep mined coal  Onshore oil and gas extraction  Other mining and quarrying proposals	All proposals  over 500 tonnes per day for petroleum and 500,000 cubic metres per day for gas  over 100 hectares
Mixed-use development including, for example, mixed-use business parks. (Mixed-use includes one or more of the above uses but does not include housing development or where retail is a main use.)	Over 100,000m <sup>2</sup> floorspace

6. The consultation was aimed at a range of partners including developers, businesses, residents' associations, environmental groups, local authorities and planning bodies. The consultation related to England only.
7. The consultation closed on 7th January 2013. We are grateful to the organisations and individuals who took time to respond and have now considered all the responses that were received. This document sets out the Government's response and next steps towards implementation.

# Outcome of the Consultation

## Overview of responses

8. We received one hundred and six responses to this consultation, from a range of local government, private/commercial sector, professional/trade bodies voluntary organisations and individuals.

### Table of respondents

Respondent	Total no. of respondents	% of total respondents
Local government, parish councils	42	40%
Non Departmental Public Body	6	6%
Private / commercial sector	14	13%
Professional / trade body	24	23%
Voluntary sector	10	9%
Individuals	8	7%
Political organisation / MPs	2	2%
Totals	106	100%

## Summary of the Government response

9. A summary of the Government's response following consultation is set out in the box below with further detail from paragraph 9 onwards.

### **Development types, associated thresholds and factors that the Secretary of State will need to take into account when considering when a project is nationally significant**

- The Government has concluded that developers of nationally significant projects falling within the following broad descriptions of development should generally be able to use the nationally significant infrastructure planning regime:
  - Offices and research and development
  - Manufacturing and processing
  - Warehousing, storage and distribution
  - Conference and exhibition centres
  - Leisure, tourism and sports and recreation
  - Aggregate and industrial minerals
- The Government intends to bring forward draft regulations by October 2013.

- Proposals for new coal development and oil and gas development will not be included in the new business and commercial category. This position will be kept under review.
- The Government does not intend to set statutory thresholds through the accompanying secondary legislation but intends to publish a policy document setting out the factors that the Secretary of State will take into account including indicative thresholds.
- The Government intends to clarify in the policy document how it will exercise its powers in Greater London with regard to the role of the Mayor.

#### **Whether retail should be a prescribed form of business and commercial development**

- The proposal not to include retail as a prescribed form of development in the accompanying regulations was widely welcomed by respondents. The Government plans to maintain that position.

#### **Whether a National Policy Statement, or Statements, should be prepared for business and commercial development**

- The Government considers that the case for a National Policy Statement, or Statements, for business and commercial development is not strong. The Government will keep this position under review.

#### **Other policy issues raised**

- The Government maintains the view that responsibility for planning for housing should remain with local authorities and that the current policy and legal position should be maintained.
- A range of other detailed issues were raised as part of the consultation response and the Government's response to these issues is set out in the remainder of this document.

# Key issues and Government response

10. The sections below set out a summary of the responses received to each question within the consultation document and the Government's response and proposed way forward.

*Question 1. Do you agree that the proposed list of development types set out at Annex A should be prescribed in regulations in order to make them capable of a direction into the nationally significant infrastructure regime?*

11. The Government set out in the consultation document a proposed list of development types which could be included within the new category of business and commercial projects, including office development (including research and development sites), manufacturing, warehousing, conference and exhibition centres, tourism, leisure and sports and recreation proposals, and major mixed-used developments and technically complex, nationally significant developments such as certain types of mining operations. The Government sought views on whether respondents agreed with this proposed list.

12. A wide range of responses were received to this question. 41% of respondents agreed with the proposed list of development types set out in the consultation and welcomed the opportunities that this new category of business and commercial development could provide for the construction sector and the potential boost to economic growth. A number of respondents welcomed the Government's proposals to speed up the planning system to support growth.

13. 54% of respondents raised concerns about the proposed list of development types. Some of these questioned the extent to which office block developments, leisure centres and warehousing could be classed as 'nationally significant'. One response suggested that 'only if the development of an exhibition centre the size of the NEC' or a 'very large' leisure, tourism and sports facilities 'such as Wembley or those used for the Olympics' should be considered as nationally significant.

14. Some of the responses received commented that the proposed expansion of the nationally significant infrastructure regime was unnecessary, as local authorities were already providing a good service to developers of business and commercial projects. A number of local authority respondents said that the proposal to extend the nationally significant infrastructure regime to business and commercial schemes was contrary to the Government's localism policy.

15. A number of respondents commented on the proposed extractive industries category. Some respondents, whilst supportive of the opt-in nature of the proposals, also acknowledged that the minerals planning regime worked well and that the minerals industry had a good working relationship with

minerals planning authorities. CBI Minerals said that they ‘strongly supported the proposals’ but commented that it was appropriate for the ‘majority of minerals applications to continue to be dealt with by the Minerals Planning Authorities.’ Other respondents suggested that the current proposed minerals type should be extended to include related facilities for minerals extraction, such as facilities for their processing, storage and rail and wharfage distribution.

16. A small number of respondents were concerned about the inclusion of some forms of minerals and, in particular, to the inclusion of coal and shale gas. The Loose Anti Opencast Network argued that coal should be treated differently from other minerals, for reasons including planning blight and the proposed phase out of coal for power generation purposes. The Town and Country Planning Association were concerned that including coal, oil and gas within the business and commercial category raised questions about the Government’s commitment to addressing climate change.

17. Some respondents suggested other development types which could be included within the list of development types, such as motorway service areas. A small number of respondents also suggested that housing and retail development should also be included in the prescribed list of development types. The Government’s response on these issues is set out below.

### **Government response**

The Government welcomes the responses received and recognises that, in most cases, developers will continue to want to work with the relevant local council to take forward business and commercial developments, particularly where they already have a good working relationship with the council.

However, the Government believes that it is positive to offer the choice of using the nationally significant infrastructure regime for the largest, most significant and complex schemes. The nationally significant infrastructure regime offers a number of important benefits including tight statutory timetabling and a ‘one stop shop’ approach to consents. It is right that developers should be able to request to opt-in to this regime where this is appropriate.

The Government proposes to bring forward draft regulations for approval in the Autumn to enable nationally significant business and commercial projects to use the regime. The Government has concluded that developers of nationally significant projects falling within the broad development types set out in the consultation document should generally be able to use the regime, with the following exceptions:

- After considering the concerns expressed about the inclusion of proposed coal schemes, the Government has decided that planning applications for new coal schemes should normally remain with the local minerals planning authority. The Government therefore does not intend to include such projects in the prescribed categories of business and commercial projects.

- After considering the responses received and comments made during the passage of the Growth and Infrastructure Act, the Government has concluded that applications for planning permission for onshore oil and gas schemes, including any future planning proposals for shale gas development, should not be included in the new business and commercial category but will keep this under review. Shale gas extraction has yet to take place at a commercial scale in this country and, as it develops, the Government will ensure that an effective planning system is in place, with the necessary guidance in place by July 2013. Applications for planning permission for onshore oil and gas should therefore normally remain with minerals planning authorities for determination.
- The Government has considered whether it is necessary to prescribe in Regulations mixed-use development as a type of development. However, as the Growth and Infrastructure Act 2014 provides for developments which are a project on their own, or part of a project, we have concluded that it is not necessary to prescribe mixed-use as a specific type of development. Mixed-use projects may come forward that consist of one or more of the other prescribed types of development that the Government will set out in Regulations.

*Question 2. Do you think that thresholds should apply and, if so, whether those in column 2 of the table at Annex A are appropriate? If not, how should these be changed?*

19. In addition to the types of projects set out in Annex A of the consultation document, we also sought views on whether thresholds should apply for each of the development types and, if so, whether those proposed in the consultation were appropriate.

20. We received a wide range of responses to this question. 38% of respondents agreed that thresholds should apply and many respondents noted that it was important that the thresholds were set at an appropriate level to ensure that only nationally significant developments could potentially use the nationally significant infrastructure regime.

21. A number of respondents agreed with the thresholds proposed in the consultation document. Others suggested that specific thresholds should be considered further – for example, a number of respondents suggested increasing the thresholds for different categories of development to ensure they captured only the very largest developments.

22. Respondents representing London interests commented that the proposed thresholds in London would be too low and would potentially capture 'routine' development, particularly in the City of London. A few respondents were concerned that the thresholds in some instances were too high, for example for new sports and leisure developments.

23. There were a range of detailed comments from a number of respondents on how the thresholds for minerals industries should be set, including proposals to focus more on the importance or rarity of the particular mineral, or to design the thresholds around the tonnage of minerals produced by a particular development.
24. A small number of respondents argued that the proposed process for determining whether or not a project is of national significance was too complex (i.e. they would have to be of a type prescribed in secondary legislation, they would also have to be above a specific threshold and the Secretary of State would have to determine whether they were of national significance). They argued that this process should be made simpler and less bureaucratic.
25. 44% of respondents did not agree with the proposed thresholds for the different types of development proposed in the consultation. A number of these respondents provided detailed comments on the thresholds proposed, in many cases similar to those outlined above – for example, arguing for thresholds to either be increased or changed in order to respond to specific issues. Others did not agree in principle with the expansion of the nationally significant infrastructure regime to business and commercial development.
26. 18% of respondents did not comment on this question.

## **Government response**

Given the very wide range of views on whether thresholds should apply and whether these have been set at the right levels, the Government believes a simpler approach is needed. The thresholds set out in the consultation document had also led to some confusion about the policy aim with some respondents appearing to believe that projects above the thresholds would either qualify for the regime or be referred in automatically. This was not the Government's intention.

The purpose of the proposed thresholds was to set a bar, above which the Secretary of State would consider requests from developers. The Government has no intention of automatically removing the planning responsibility for nationally significant business and commercial developments from local planning authorities, unless a request is made by a developer and the Secretary of State is satisfied the project is one of national significance.

As indicated above, in the response to Question 1, the Government intends to set out in regulations the types of development that could potentially be directed into the Planning Act regime. However, in response to the range of consultation responses, the Government no longer intends to include statutory thresholds within those regulations.

The Government does, however, recognise that, for some, the establishment of thresholds can provide clarity and will help parties to understand the range of projects that might be directed into the regime. The Secretary of State therefore proposes to publish a policy document setting out the indicative thresholds and other factors that the Secretary of State will take into consideration. The Secretary of State will not generally expect to receive requests for a direction for development below the indicative thresholds.

The Secretary of State does not intend to set thresholds specific to Greater London. He will, however, clarify in the policy document that he will not generally expect to receive requests for a direction for projects that would not also be capable of a direction to the Mayor under the Town and Country Planning (Mayor of London) Order 2008 as a project of potential strategic importance. The Town and Country Planning (Mayor of London) Order 2008 can be found here: <http://www.legislation.gov.uk/uksi/2008/580/contents/made>.

The Government's intention is that the indicative thresholds will be broadly comparable to those set out in the consultation document with the exception of the threshold for minerals. We received a large number of responses which suggested that the threshold, set at 100 hectares, was too low, in particular for aggregate minerals. We therefore propose to increase it to 150 hectares for aggregate and industrial minerals.

*Question 3. Do you agree with our assessment of the factors that the Secretary of State would need to take into account when considering whether a project is nationally significant?*

27. The consultation document set out proposals for the factors that the Secretary of State would need to take into account when considering whether a project was nationally significant. The proposals included:
- The physical scale of the proposed development or project;
  - The possible impacts of the proposed development or project, particularly if it has significant effects beyond their immediate locality;
  - The location of the proposed development or project and whether that gives rise to substantial cross-boundary or national controversy;
  - The potential economic impact where a proposed development may have significant impact on economic growth;
  - For proposed minerals extraction, the rarity and importance of the mineral; and
  - Whether issues of national security or which involve foreign Governments are involved.
28. 41% of respondents agreed with our proposals for the factors that the Secretary of State would need to take into account when considering whether a project is nationally significant. We received a wide range of specific suggestions, including suggestions around adding further considerations, such as health, transport or environmental impacts or the complexity or urgency of a particular project.
29. The Planning Officers Society commented that the proposed factors seemed generally appropriate but they were concerned about the final proposed category 'as this could, unwittingly, capture non-nationally significant projects (e.g. diplomatic function facilities)'. The Royal Town Planning Institute however, commented that a scheme which raised issues of national security was self-evidently of national impact.
30. 35% of respondent did not agree with the proposed factors and raised concerns over whether the proposed criteria were potentially too broadly drawn and questioned whether location or size or scale should be considered a factor in determining whether a project is nationally or not. A number of respondents commented that the sort of development that could potentially be within the proposed development types and thresholds would be of regional rather than national significance.
31. We also received responses which suggested that the types of development, their associated thresholds and the factors that the Secretary of State would need to take into account when considering whether a project was nationally significant, should be simplified. Our response on this issue is set out above in the Government's response to Question 2.
32. 24% of respondents did not respond to this question.

## **Government response**

The Government proposes to revise the factors involved in establishing national significance, in light of the responses received and will publish these in a policy document with the indicative thresholds as referred to above.

In light of comments received, the Government proposes to remove the specific reference to the interests of foreign governments. It agrees that the involvement of foreign governments will not necessarily indicate that a scheme is of national significance. For matters relating to diplomatic premises the Secretary of State will continue to have the power to call-in applications made under the Town and Country Planning regime should that be necessary. The Secretary of State also has the power to call-in, for his own determination, planning applications, which raise matters of national security.

The policy document will be set out alongside the draft Regulations in October 2013.

### *Question 4. Do you agree that retail projects should not be a prescribed business or commercial project?*

33. We set out in our consultation that the Secretary of State was minded to exclude retail development from the list of types of projects to be included in the regulations. This was because the Government has clearly set out their town centre first policy in the National Planning Policy Framework – making clear that ‘local planning authorities should recognise town centres as the heart of their communities and pursue policies to support their viability and vitality’<sup>1</sup> and through the Government’s response to the Mary Portas Review<sup>2</sup>.
34. 53% of respondents supported this approach. They welcomed the strong message from the Government about the importance of the town centre first policy and the important role that local authorities play in ensuring the health of their local high streets. Responses from local authorities generally agreed with this proposal asserting that local authorities are ‘best placed to assess the local impacts of any retail scheme’.
35. 9% of respondents did not agree and argued that retail should be a prescribed types of development included in the new business and commercial category. These responses generally came from members of professional trade associations and businesses. They considered retail developments to be ‘as significant as any other commercial development in

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<sup>1</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/6077/2116950.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf)

<sup>2</sup> <https://www.gov.uk/government/publications/high-streets-at-the-heart-of-our-communities-government-response-to-the-mary-portas-review>

promoting growth'. Further arguments included recognition of the possible job opportunities that would result with retail developments.

36. 38% of respondents did not comment on this question.

### **Government response**

The Government recognises the important role that retail developments can play in securing economic growth and that many retail developments do form part of much wider projects which could be of national significance.

However, given the strong support for the proposal in the consultation document, the Government does not intend to include retail-led development as a prescribed form of business and commercial project. The National Planning Policy Framework, and our response to the Portas Review, both set out the Government's position with regard to ensuring the vitality of town centres. The Government believes it is appropriate that large retail-led developments normally remain with local planning authorities for determination.

The Government recognises that many developments may include an element of retail as part of the overall project. The Secretary of State will therefore consider requests for a direction where retail is not the primary element but is associated development.

*Question 5. Do you agree that Government should not prepare a National Policy Statement (or Statements) for the new category of business and commercial development?*

37. We received a range of responses to this question, with 35% of respondents agreeing with the Government's proposed approach. Those who agreed that a National Policy Statement would not be required pointed to the range of issues which would need to be covered in a National Policy Statement if it were to include all the business and commercial types of development and the potential additional layer of bureaucracy that this would add. A number of respondents also commented that the existing policy framework, including the National Planning Policy Framework, would be sufficient.

38. 42% of respondents disagreed with the proposal not to have a National Policy Statement or Statements for this new category of development. Those who disagreed with the Government proposal highlighted a number of concerns, including the lack of a clear policy framework for decision-making; the importance of Parliamentary scrutiny of National Policy Statements; and concern about the Government's commitment to National Policy Statements more generally. One respondent suggested that a "light touch" version of a National Policy Statement should be prepared.

39.23% of respondents did not comment on this question.

### **Government response**

The Government takes the view that the reasoning for not having a National Policy Statement, or Statements, for business and commercial development remains strong. The Government therefore does not intend to prepare a National Policy Statement, or Statements but will keep this position under review.

The Government is also clear that National Policy Statements remain a crucial element of the nationally significant infrastructure regime, providing the decision-making framework for nationally significant infrastructure projects. National Policy Statements remain central to the Government's planning reforms because they provide clarity of policy and predictability for those wishing to invest in new infrastructure. There is no question of Government moving away from their commitment to National Policy Statements. Thus far, the Government has designated National Policy Statements on Energy, Ports, and Waste Water. The Government also intends to finalise the Hazardous Waste National Policy Statement shortly.

The National Planning Policy Framework is aimed primarily at local authorities – both in relation to plan making and decision making. The Framework does, however, state that it may be an important and relevant consideration when determining applications for nationally significant infrastructure projects. What is an important and relevant consideration is a matter for the decision maker to determine on a case by case basis. The National Planning Policy Framework will also have fed through to local plan policies so, where there is an up-to-date local plan, that is also likely to be an important and relevant consideration.

*Question 6. Do you have any other comments on the proposals that you would like to make?*

40. **Housing:** There was strong support for the exclusion of housing as a prescribed form of business and commercial development. The majority of respondents acknowledged the central role of local authorities when making decisions on planning applications for housing development.

41. A small number of respondents disagreed with the proposal to exclude housing from the regime with particular referring in particular to mixed-use development. Some respondents expressed concern that many schemes, which would otherwise be considered of national significance, will not be able to access the regime if they include a small element of housing and that many large schemes rely on the housing element to secure the necessary finance.

### **Government response**

Planning for housing and the determination of planning applications for housing development is a primary role of local councils and the Government does not consider it appropriate to remove this responsibility from them. The Government has taken a number of steps to make clear the role of local councils in planning for housing including through the National Planning Policy Framework.

The Planning Act 2008 already bars dwellings from being consented as “associated development” alongside a nationally significant infrastructure project. The Growth and Infrastructure Act 2013 additionally sets out that the Government may not prescribe housing as a form of business and commercial development.

Given the strong support for the exclusion of housing from the nationally significant infrastructure planning regime and the Government proposes to take no further action in this respect.

42. **Statutory nuisance:** A small number of respondents also questioned the interaction with the statutory nuisance regime expressing concern that a wide range of schemes could potentially enjoy immunity under Section 158 of the Planning Act 2008, from claims of nuisance. The Noise Abatement Society expressed concern that there would be ‘no intrinsic right for neighbours for protection from noise or other disturbance or unhealthy emissions from development’.

### **Government response**

The Government has considered whether extending the regime to new categories of business and commercial development raises additional concerns about the defence of statutory authority. It has concluded that there are no new issues with respect to the construction phase of a project, but there may be additional features to consider with the resulting development, especially if it is to be mixed-use.

However, Section 158(3) of the Planning Act enables the defence of statutory authority to be disapplied, either in whole or in part (for example, once the development is built), and on a case by case basis. The Secretary of State for Communities and Local Government will consider carefully whether the defence of statutory authority should be disapplied in whole or in part for any particular proposal.

**43. Local authorities fees:** A number of local authority respondents raised concerns about the loss of fees that they would experience if a business and commercial application was made through the nationally significant infrastructure regime rather than through the local planning authority.

#### **Government response**

As set out in the Growth and Infrastructure Bill Impact Assessment, we only expect a very small number of applications to come forward via this route. If local authorities can determine applications quickly and offer a high quality service, applicants of nationally significant projects are likely to only choose the infrastructure planning route if it still offers other benefits which the local authority cannot provide (such as the one stop shop, which will be useful where multiple consents are required).

Should a proposed business and commercial development be directed into the nationally significant infrastructure planning regime, it is open to local authorities to recover costs (under Section 93 of the Local Government Act 2003) for pre-application advice they provide. This can be formalised within a Planning Performance Agreement.

**44. Speed of decision making:** A number of respondents questioned whether the nationally significant infrastructure regime would be a quicker route for developers and commented that the majority of planning applications were determined promptly by local planning authorities.

#### **Government response**

The Government recognises that local planning authorities can and often do offer an excellent and timely service to developers and in many cases, the developer will choose to continue with the local authority planning route.

However, the nationally significant infrastructure regime offers a number of key benefits– in particular, a statutory one year timetable from the point at which the application goes to examination and the ‘one stop shop’ approach.

In some cases, the nationally significant infrastructure regime will offer a more attractive option for developers. Fundamentally, this will be a choice for developers to weigh up on a case by case basis.

**45. The Aarhus Convention:** A small number of comments were received which questioned whether the proposals to extend the nationally significant infrastructure planning regime to business and commercial projects were compliant with the Aarhus Convention.

## **Government Response**

The Government does not consider that extending the nationally significant infrastructure planning regime to business and commercial projects will conflict with the requirements of the Aarhus Convention. Information about projects is available at the pre-application stage and throughout the decision making process; there are a number of opportunities for representations by those who wish to make them; and there is a process for judicial review of decisions.