



Communities and Local Government
Eland House
Bressenden Place
London
SW1E 5DU

Department of Energy and Climate Change
3 Whitehall Place
London
SW1A 2HD

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To: Local Authorities¹

LOCAL AUTHORITIES' ROLE IN NEW CONSENTING PROCESS FOR NATIONALLY SIGNIFICANT INFRASTRUCTURE PROJECTS

The Planning Act 2008 establishes a new framework for a more efficient, transparent and accessible planning system for nationally significant infrastructure projects (NSIPs) – with decisions on these projects taken within a new framework of National Policy Statements (NPSs). Some local authorities have asked for clarification about their role in this new framework in relation to the development consent process for new nuclear power stations.

This letter focuses on three issues that appear to be of most concern to local authorities: resources; consideration of applications for preliminary works; and materiality of draft NPSs.

This letter is without prejudice to the Government's Strategic Siting Assessment process, which is still ongoing. Whilst a number of sites have been nominated into that process, the Government has not yet reached final views about whether those sites are potentially suitable for the deployment of new nuclear power stations. A list of potentially suitable sites will be included in a draft NPS for nuclear power, which will be published for consultation later in 2009.

Resources

Local authorities already look closely at any major infrastructure projects proposed in their area and engage with developers on potential applications. However, where a local planning authority receives a request for pre-application advice that requires substantially more resources than is normal, it is open to them to recover costs by charging a fee under section 93 of the Local Government Act 2003. Statutory guidance is available on the use of this power². Such a decision would be a matter for the local authority in question, in light of discussions with the potential scheme promoter.

¹This letter is being sent to local authorities in areas where sites have been nominated into the Government's Strategic Siting Assessment process, and to the Local Government Association. It is also being made available online.

²<http://www.communities.gov.uk/publications/localgovernment/generalpower2>

Further to this and following proposals set out in the 2007 Planning White Paper³, Government introduced “Planning Performance Agreements” (PPAs) to help local authorities deal with very large and complex applications (or potential applications in relation to NSIPs). These are up front agreements between a developer and a local planning authority that set out all the information required and the timetable for delivering the decision or advice. As the Planning White Paper set out, the Government believes that where the size and importance of a proposal makes it appropriate, local authorities should seek to agree PPAs with developers. Indeed, the Renewable Energy Strategy⁴ has just announced that CLG will be setting up a demonstration project for renewable and low carbon energy applications; encouraging developers to make good use of this process will improve certainty and manage expectations about the process and timetable for completion.

Effective PPAs can however be resource intensive and so, as set out above, local planning authorities will sometimes charge developers for pre-application work on a cost-recovery basis. Again, the decision on charging is entirely up to local planning authorities but, where they do so, this should be specified as part of the agreement.

Further guidance on this, which you may find helpful, is available online:

- joint CLG / ATLAS guidance on Planning Performance Agreements, which provides advice on handling large scale and complex planning applications⁵; and
- case study by the Planning Advisory Service on charging for pre-application advice⁶.

Preliminary works

Some local authorities have asked about the scope they have to consider applications from developers for planning permission to undertake preliminary works on potential new nuclear sites, in advance of an application to the Infrastructure Planning Commission (IPC).

As explained below, Government policy on new nuclear may be a material factor for local authorities to consider in exercising any role they may have in relation to nuclear new build. Where appropriate, this may include considering applications for planning permission for preliminary or preparatory works on site ahead of the main application to the IPC. Subject to the legal framework, local authorities should have confidence in considering such applications on their merits, including consideration of the need for an environmental impact assessment for the works in question and whether to grant consent. Local authorities may decide that such consent should potentially be granted on the basis that any preliminary works carried out will be removed if the

³<http://www.communities.gov.uk/documents/planningandbuilding/pdf/planningsustainablefuture.pdf>

⁴http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/renewable/res/res.aspx

⁵<http://www.atlasplanning.com/lib/liDownload/195/P4.9%20PDA%20Pilot%20Report.pdf?CFID=736988&CFTOKEN=65603811>

⁶<http://www.pas.gov.uk/pas/aio/40105>

subsequent application to the IPC is turned down or if, within a specified time, no application is made. Guidance on planning obligations is available in CLG Circular 05/2005⁷.

Appropriate pre-application advice from local planning authorities, or consent for preliminary works, should not fetter the discretion of councils to represent the views of their area on any subsequent application to the IPC.

Materiality of Draft National Policy Statements

When considering the issue of materiality it may be helpful to refer to *The Planning System: General Principles* published by CLG in 2004⁸. This sets out the approach that has been established as a result of planning case-law. It states that “*In principle...any consideration which relates to the use and development of land is capable of being a planning consideration. Whether a particular consideration falling within that broad class is material in any given case will depend on the circumstances.*” (Stringer v MHLG 1971)

The General Principles goes on to explain that the Government’s statements of planning policy are material considerations that must be taken into account, where relevant, in decisions on planning applications and that “emerging policies, in the form of draft policy statements or guidance, can be regarded as material considerations, depending on their context”. We would expect draft NPSs to be treated in the same way.

Therefore, it is for decision-makers to reach a view on what they consider to be a material consideration to the planning application before them and the weight to be attached to it. In this case the precise weight to be given to an emerging NPS for nuclear power, ahead of designation (for example if the NPS has been published in draft form and is out to consultation) will be a matter for the relevant decision-maker.

It may be helpful to clarify that NPSs are not part of the statutory development plan for the purposes of the town and country planning regime but are statements of national policy on nationally significant infrastructure. Regional planning bodies (or new style responsible regional authorities when in place⁹) and local planning authorities will therefore need to have regard to NPSs when preparing their plans at regional and local level¹⁰.

Ahead of publication of the draft NPS for nuclear power, it is also worth pointing out that the Government has already made clear its policy on nuclear energy in various documents, and local authorities, if they consider that they are material to any planning application before them, must take them into account in exercising their role in the planning regime. In particular, the White Paper on Nuclear Power, published in

⁷<http://www.communities.gov.uk/publications/planningandbuilding/circularplanningobligations>

⁸<http://www.communities.gov.uk/documents/planningandbuilding/pdf/147396.pdf>

⁹Subject to the passage of the Local Democracy, Economic Development and Construction Bill (Part 5).

¹⁰Sections 5(3)(a) and 19(2)(a) of the Planning and Compulsory Purchase Act 2004.

January 2008, set out the Government's policy on new nuclear¹¹. It concludes that "the Government believes new nuclear power stations should have a role to play in this country's future energy mix alongside other low-carbon sources; that it would be in the public interest to allow energy companies the option of investing in new nuclear power stations; and that the Government should take active steps to facilitate this".

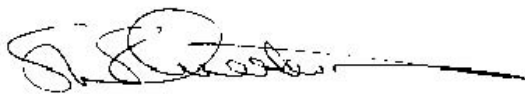
In addition, the Government response to consultations on the Strategic Siting Assessment process, published in January 2009, contains Government policy on the identification and assessment of sites which are potentially suitable for the deployment of new nuclear power stations by the end of 2025¹². The cut-off date of 2025 reflects the Government's view that "...it is important to focus on sites which can come on stream in good time to contribute to our goals on climate change and energy security..."

Most recently, the Government's UK Low Carbon Transition Plan, published on 15 July 2009, says that "...in order to decarbonise, our electricity supply will need to come from a mix including renewable sources, nuclear power and fossil fuels with carbon capture and storage. The draft National Policy Statement (NPS) for nuclear power, which the Government is publishing for public consultation and Parliamentary scrutiny later this year, will set out in more detail why the Government considers there is an early need for nuclear power as part of this mix"¹³.

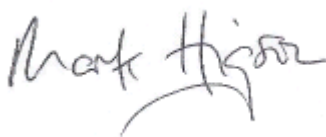
More background on the Government's new nuclear policy can be found on the Office for Nuclear Development website¹⁴.

I hope this letter is helpful.

Yours,



Steve Quartermain
Chief Planner
Department for Communities
and Local Government



Mark Higson
Chief Executive
Office for Nuclear Development
Department of Energy and Climate Change

¹¹ <http://www.berr.gov.uk/files/file43006.pdf>

¹² <http://www.berr.gov.uk/files/file49865.pdf>

¹³ http://www.decc.gov.uk/en/content/cms/publications/lc_trans_plan/lc_trans_plan.aspx

¹⁴ http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/energy_mix/nuclear/nuclear.aspx