



Department for  
Communities and  
Local Government

## Planning Act 2008:

Guidance on Nationally Significant Infrastructure Projects  
and Housing



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# Planning Act 2008: Guidance on Nationally Significant Infrastructure Projects and Housing

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# Introduction

1. This guidance covers changes to the Planning Act 2008 (“the 2008 Act”) made by section 160 of the Housing and Planning Act 2016. The changes allow development consent to be obtained for housing which is related to a nationally significant infrastructure project under the 2008 Act.
2. The 2008 Act provides the consenting regime for granting planning and other consents for nationally significant infrastructure projects. These are large scale developments, both onshore and offshore, such as new harbours, roads, railways, power stations and electricity transmission lines. The 2008 Act sets out the thresholds above which certain types of infrastructure development are considered to be nationally significant and in relation to which developers must seek development consent. The Secretary of State may also issue a direction<sup>1</sup>, the effect of which is to bring a project into the remit of the 2008 Act.
3. Obtaining development consent under the 2008 Act involves a front loaded process where the developer consults on a proposed project before submitting an application. The application will then be examined by a single inspector or a panel of inspectors from the Planning Inspectorate, known as the Examining Authority. On completion of the examination, the Examining Authority will provide a recommendation report to the Secretary of State who will decide whether development consent should be granted.
4. Where the Secretary of State decides to grant consent for a project, this will be through a Development Consent Order which is normally made as a statutory instrument – a form of secondary legislation. The Development Consent Order not only provides planning consent for the project but may also incorporate other consents and include authorisation for the compulsory acquisition of land. The Order will specify details of the development consented and its location (including plans), and any requirements (conditions) that must be met in implementing the consent.
5. The changes to the 2008 Act made by the Housing and Planning Act 2016 allow the Secretary of State to grant development consent for housing related to a nationally significant infrastructure project. This guidance note sets out matters relating to:
  - the types and location of infrastructure projects where housing may be included in an application for development consent;
  - the circumstances where housing might be consented;
  - the maximum amount of housing that may be consented;
  - the location of housing that may be consented; and
  - some of the factors that may be taken into account in deciding applications for development consent that include an element of housing.

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<sup>1</sup> Directions may be issued under section 35 of the 2008 Act for projects in the fields of energy, transport, water supply, waste water and waste and for business and commercial projects of a prescribed type where the Secretary of State is of the view that these are nationally significant.

It also includes a guide to the planning process for handling applications for nationally significant infrastructure projects which include housing and the considerations that developers as well as local authorities and other consultees will need to take into account at each stage of that process.

## Who is this guidance aimed at?

6. The main audience of this guidance is expected to be developers of nationally significant infrastructure projects who are considering including housing as part of their application for development consent for a nationally significant infrastructure project. It may also be useful to local authorities, statutory consultees, and organisations or individuals with an interest in such projects.

## Status of this guidance

7. Nothing in this guidance should be taken as indicating that any requirement of planning law or any other law may be overridden. The guidance does not replace the statutory provisions of the 2008 Act or any regulations made under that Act and does not add to their scope. Only the courts can give an authoritative interpretation of legislation.
8. Section 115(7) of the 2008 Act requires the Secretary of State to take into account any matters set out in this guidance when deciding an application for an order granting development consent that includes related housing development.

## Section 160 of the Housing and Planning Act 2016

9. Section 160 of the Housing and Planning Act 2016 (“the 2016 Act”) amends section 115 of the 2008 Act by adding “related housing development” to the types of development for which development consent can be granted.
10. Related housing development is defined in legislation<sup>2</sup>:  
“Related housing development” means development which –
  - (a) consists of or includes the construction of one or more dwellings,
  - (b) is on the same site as, or is next to or close to, any part of the development within subsection (1)(a), or is otherwise associated with that development (or any part of it),
  - (c) is to be carried out wholly in England, and
  - (d) meets the condition in subsection (4C).”

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<sup>2</sup> Section 115(4B) of the 2008 Act.

New subsection 4C allows related housing development in cases where the development for which development consent is required (ie the infrastructure project itself) is to be carried out in England and/or in waters adjacent to England up to the seaward limits of the territorial sea.

11. The effect of this is to allow housing to be granted development consent in two specific circumstances:
  - (i) where there is a **functional need** for the housing in terms of the construction or operation of a project. For example where housing (rather than temporary accommodation) is needed for construction workers, or to support a 24 hour presence on the site for key workers;
  - (ii) where the housing is not functionally linked to the infrastructure project but is in **geographical proximity** to the project. For example, housing which is within the boundary of an infrastructure project such as a business and commercial project that includes housing, or housing that is adjacent to or in close proximity of a nationally significant project (eg a rail station on a railway line).
12. The changes introduced by the 2016 Act will not allow projects that only comprise housing to be granted development consent. Housing will only be capable of being consented if it is linked (either by a functional need or by geographical proximity) to an infrastructure project that itself requires development consent.

## Development associated with housing

13. An application for development consent that includes housing<sup>3</sup> may also include other development associated with that housing, such as local infrastructure. Any such development should be integral to the housing proposed and be proportionate to the scale of housing for which consent is sought.

## Infrastructure categories and housing

14. The changes made by the 2016 Act allow development consent to be granted for housing related to any infrastructure project that requires development consent under the 2008 Act as long as the project is to be carried out in England, and/or in waters adjacent to England (up to the seaward limits of the territorial sea). Development consent cannot be granted for housing in Wales.
15. The Government does not propose to place limits on the categories of infrastructure project that may include housing. This will mean any of the categories of nationally

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<sup>3</sup> For the remainder of this document, unless otherwise specified, the term “housing” means “related housing development” as defined in the amendments to section 115 of the Planning Act 2008 made by the Housing and Planning Act 2016.

significant infrastructure projects specified in the 2008 Act<sup>4</sup>, and any projects that are directed into the regime<sup>5</sup> may include an element of housing in an application for development consent. Some infrastructure project types will naturally be more suited for inclusion of housing than others. However, the Government believes that decisions on whether to include housing in an application should be left to the judgement of developers, taking into account this guidance note.

## Amount of housing

16. The Government wants to ensure that the flexibility being provided to allow an element of housing to be consented under the 2008 Act does not undermine the local planning process and the wider responsibilities for local authorities to plan for housing needs in their area. This guidance therefore sets a maximum amount of housing that can be consented through a Development Consent Order.

## Housing provided on the basis of geographical proximity

17. Where permanent housing is being provided on the basis of geographical proximity to an infrastructure project, the number of dwellings for which consent is sought through a Development Consent Order should be limited to 500. Given the importance of ensuring that the local planning process is not undermined, it is very unlikely that the Secretary of State will consent more than 500 dwellings for a single nationally significant infrastructure project.

## Housing provided on the basis of functional need

18. Where housing is being provided on the basis of a functional need, the maximum amount of permanent housing that could be granted development consent through a Development Consent Order is also 500 dwellings.
19. There may be some situations where a developer chooses to provide housing for construction workers (as opposed to temporary accommodation) which is of a standard that will allow this housing to be retained as, or converted to, permanent dwellings once construction of an infrastructure project is complete. In such cases, accommodation for more than 500 workers may be consented for the construction phase of the project as long as this is subsequently converted so that the number of permanent dwellings after any conversion is 500 or less. The requirement for conversion should be included within the Development Consent Order.

## Temporary accommodation

20. The ability for a Development Consent Order to include consent for temporary accommodation (eg for construction workers) remains unchanged. Such temporary

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<sup>4</sup> See section 14 of the 2008 Act

<sup>5</sup> Under section 35 of the 2008 Act

accommodation should continue to be classed as associated development rather than related housing development. There is no limit to the amount of temporary accommodation units that can be provided. However the accommodation will be expected to be removed or demolished once construction of an infrastructure project is complete unless a separate planning permission (under the Town and Country Planning Act 1990) has been granted for its retention.

## Restrictions on amount of housing in certain locations

21. Irrespective of whether housing is being provided on the basis of geographic proximity or functional need, in locations where specific policies in the National Planning Policy Framework<sup>6</sup> indicate that development should be restricted, a lower number of dwellings, or no housing at all, is likely to be appropriate. These policies include those for:
- sites protected under the Birds and Habitats Directives, listed or proposed Ramsar Sites and/or sites designated as Sites of Special Scientific Interest;
  - land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, Heritage Coast or within a National Park (or the Broads Authority);
  - designated heritage assets; and
  - locations at risk of flooding or coastal erosion.
22. In assessing any proposals for housing in locations where development should be restricted, the Examining Authority (during the examination of the application for development consent) and the Secretary of State (when reaching a decision on the application) will assess the housing element, including the appropriateness of the amount of housing being sought, against the relevant policies set out in the National Planning Policy Framework and the development plan.

## Affordable housing

23. In cases where there is no functional need and housing is granted consent on the basis of geographic proximity to an infrastructure project, the Secretary of State expects any housing consented to include a percentage of affordable housing in accordance with any policies set out in a local plan. Affordable housing should be secured through a section 106 agreement between the developer and the local authority.

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<sup>6</sup> <https://www.gov.uk/government/publications/national-planning-policy-framework--2>



## Location of housing

24. Where housing is being provided on the basis of geographical proximity to the infrastructure project for which development consent is sought, developers will need to demonstrate that it is on the same site as, or is next to or close to, any part of that project. In this context, “close to” should be considered to be up to 1 mile away from any part of the infrastructure (excluding any associated development) for which development consent is being sought. It should be clear from the application documents provided when an application is made that the housing proposed meets this parameter (see paragraphs 35-38).
25. If housing is being provided on the basis of a functional need, then the expectation is that the housing will normally need to be located close to the infrastructure project concerned. However, where it is proposed to provide a large amount of housing to meet a functional need (eg for construction workers) it may be more appropriate for this to be in a location that is not in the immediate vicinity of the infrastructure project. It may, for example, be more sustainable in overall terms for the housing to be provided in a local town, with better access to other local services and facilities, as long as it is within reasonable commuting distance of the infrastructure being constructed.
26. Developers will be expected to include a justification for the location of any housing in their application for development consent (see paragraphs 35 -38).

## Assessment of housing proposals

27. The housing element of any application for development consent will be subject to the examination process provided for by the 2008 Act and associated secondary legislation<sup>7</sup>. Although there will be a single examination, the housing element of any application is likely to need careful examination in its own right to ensure that the housing proposed is acceptable in planning terms.
28. It will be for the Examining Authority to decide the basis for the examination of the housing elements of any application. But as a minimum, it is likely that they will want to consider the justification for any housing where it is being provided to meet a functional need; the amount of housing being proposed (irrespective of whether it is being proposed on the basis of functional need or is being provided on the basis of geographic proximity); and its location.
29. In examining and reporting on the housing proposal, the Examining Authority will need to assess the housing against policies set out in the National Planning Policy Framework and matters set out in supporting planning guidance. The Framework is also likely to be an important and relevant matter for the Secretary of State when

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<sup>7</sup> The Infrastructure Planning (Examination Procedure) Rules 2010

reaching a decision on whether to grant development consent for any housing element of an infrastructure project.

30. The policies in any development plan may also be relevant in terms of the assessment of housing proposals by the Examining Authority. Policies in the development plan are also likely to be an important and relevant consideration for the Secretary of State when deciding whether to grant development consent for the housing element of the scheme.
31. The 2008 Act provides local authorities with the opportunity to submit a local impact report which sets out the likely impact of the development covered by an application for development consent. Local impact reports are valuable documents that ensure the Examining Authority is aware of the local impacts of development for which development consent is sought and so will assist in the overall examination of an application. The Secretary of State is also required to have regard to any local impact report when deciding whether to grant development consent. Local authorities are strongly encouraged to submit a local impact report and to ensure that it covers any specific impacts arising from the housing. It is also open to the Examining Authority to request any information from a local authority that they may consider necessary (for example, in relation to the impacts on local housing markets and supply).

## Application process under the Planning Act 2008

### Directions for business and commercial and other projects

32. Where the Secretary of State considers a request for development<sup>8</sup> to be directed into the nationally significant infrastructure planning regime, the request will be considered in terms of the provisions set out in section 35 of the 2008 Act. In particular, the Secretary of State will consider whether the proposed infrastructure project in itself is of national significance. Consideration of any housing element to a project will not form part of this assessment of national significance and will not be a factor in deciding whether a direction should be issued.

### Pre-application and consultation

33. The extensive pre-application consultation that is a key feature of the nationally significant infrastructure planning regime applies equally to any project where it is proposed to include an element of housing in an application for development consent. Full engagement with local authorities and local communities on any

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<sup>8</sup> Under section 35(2) of the 2008 Act, a direction can be given if development is or forms part of a project or proposed project in the field of "...energy, transport, water, waste water, or waste" or a "business and commercial project (or a proposed project) of a prescribed prescription".

proposed infrastructure projects that will involve housing is essential. That engagement must include clear information about the amount and type of housing proposed and where it will be located. Existing guidance on the Planning Act 2008 pre-application process<sup>9</sup> will also be equally relevant to proposed infrastructure projects that include an element of housing.

34. Developers should also discuss any proposals for infrastructure projects with an element of housing with the Planning Inspectorate at an early stage in the pre-application process.

## Applications

35. An application for development consent for an infrastructure project that includes an element of housing will need to meet the requirements set out in existing regulations<sup>10</sup>. The regulations require the applicant to provide a draft of the proposed Development Consent Order and this draft will need to include matters relating to any housing element of a project. It is for applicants to decide what should be included in their draft Development Consent Order, but many matters relating to housing are likely to be points of detail that are better suited to being requirements for subsequent agreement with the relevant local authority. The Development Consent Order must, however, provide sufficient detail and clarity on what is being consented so that the Secretary of State can properly assess the impacts of the housing development when taking a decision on whether to grant development consent.
36. The regulations<sup>11</sup> include a requirement for the application to be accompanied by “any other plans, drawings or sections necessary to describe the proposals for which development consent is sought, showing details of design, external appearance, and the preferred layout of buildings or structures, drainage, surface water management, means of vehicular and pedestrian access, any car parking to be provided, and means of landscaping.” This will apply equally to the housing element of any application.
37. In addition to the material set out in the regulations, developers should provide a simple one page summary of the housing element of their application. This should include the amount of housing for which development consent is sought and the basis for it (functional need or geographical proximity). In the case of housing being provided to meet a functional need, a short justification for that need should also be included within the summary.
38. Where housing is being provided on the basis of geographical proximity, the developer should provide an assessment of the impact of the housing proposed in terms of local plan provision and local housing supply.

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<sup>9</sup> <https://www.gov.uk/government/publications/guidance-on-the-pre-application-process-for-major-infrastructure-projects>

<sup>10</sup> The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009

<sup>11</sup> Regulation 5(o).

## Acceptance stage

39. The legal basis for consideration of whether an application for development consent should be accepted for examination will be no different where an application includes an element of housing. Under the 2008 Act, the Secretary of State will only be able to accept an application where the application is considered to be of a satisfactory standard and where the applicant has complied with the requirements in respect of pre-application procedures<sup>12</sup>. In considering whether pre-application procedures have been met, the Secretary of State will have regard to the consultation report submitted with the application, any adequacy of consultation representation received from a local authority, and the extent to which the applicant has had regard to guidance on pre-application procedures. In all cases where an element of housing has been included in an application, the Secretary of State will want to ensure that the housing element has been properly consulted on and that the housing element of the application has been prepared to a satisfactory standard before any application is accepted for examination.
40. The Secretary of State is highly unlikely to accept an application for examination which is seeking development consent for more than 500 permanent dwellings.

## Examination of applications

41. The examination of any application will be an examination of the whole application for development consent. However it is likely that the housing element of a scheme will need to be carefully examined in order to assess the acceptability of the housing proposed in planning terms. It will be for the Examining Authority to decide the issues that arise in respect of the housing element that need examination and how the examination of those issues should be undertaken.

## Report and recommendations by the Examining Authority

42. There will be no change to the way in which the Examining Authority reports to the Secretary of State. Currently, the Examining Authority may recommend that infrastructure development (or associated development) should be granted development consent, granted consent with modifications, or be refused consent. The Examining Authority will similarly be able to recommend that related housing development should be granted consent, granted consent with modifications or be refused consent. However, it will not be able to recommend granting consent for housing where it recommends refusing consent for the infrastructure to which the housing is related.

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<sup>12</sup> See section 55(3) of the 2008 Act

## Decisions by the Secretary of State

43. There will also be no changes to the process for taking decisions by the Secretary of State. Decisions on applications for development consent for infrastructure projects that include an element of housing will be taken by the Secretary of State with decision making responsibility for the infrastructure concerned.
44. The requirement<sup>13</sup> for the Secretary of State to decide an application in accordance with any relevant national policy statement (except to the extent that certain other considerations set out in the 2008 Act may apply) remains. It will, however, be open to the Secretary of State to grant development consent for the infrastructure, but refuse consent for some or all of the housing, if the Secretary of State considers that the adverse impact of the housing outweighs the benefits of the development as a whole.

## Changes to Development Consent Orders after development consent has been granted

45. The 2008 Act and regulations<sup>14</sup> make provision for changes to be made to Development Consent Orders once development consent has been granted by the Secretary of State. However, any application for a change that seeks development consent for housing may fall into the category of being a change for which a fresh application for development consent will be required<sup>15</sup>. This is particularly likely to be the case if it is proposed to seek consent for a significant amount of housing when little or no housing was included in the original consent.

## Enforcement

46. Existing mechanisms in the 2008 Act<sup>16</sup> will apply to projects where the Development Consent Order for an infrastructure project includes consent for housing. Such provisions would be available if, for example, a developer constructed related housing development but did not build the infrastructure it was related to.

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<sup>13</sup> Section 104(3) of the 2008 Act

<sup>14</sup> See, in particular, Schedule 6 of the 2008 Act and the Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011 (as amended).

<sup>15</sup> See the amendment made to Schedule 6 of the 2008 Act by section 28(3) of the Infrastructure Act 2015.

<sup>16</sup> See part 8 of the 2008 Act and the power to seek a revocation of a Development Consent Order under Schedule 6 of the 2008 Act