

## **Responses to webinar questions for ‘Linear Infrastructure Projects: Best Practice in NSIP Applications’**

During the webinar on linear infrastructure projects, we received numerous questions from participants. While we addressed many of these during the live session (which you can find in the recording), we were unable to respond to all questions due to time constraints.

Below are our responses to the questions we did not have time to address during the webinar.

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### **Question:**

You mentioned the importance of making sure (as far as possible), that issues are addressed prior to examination. E.g: the HyNet pipe bridge. However, how do you suggest applicants respond when issues are not raised until after examination has started? Especially when consultees have had numerous opportunities to raise issues during consultation, and expert topic group discussions etc.

### **Answer:**

The webinar emphasised the importance of pre-application engagement and raising matters at this time is strongly encouraged. In response to the scenario set out in the question, the Examining authority (ExA) would need to determine whether the matter is still pertinent to the outcome and therefore its recommendation. It may just be too late, unless the applicant is willing to engage.

It is helpful to ExAs if an issue raised during examination can be taken forward by the parties outside the cycle of questions and responses to questions, to try and reach agreement - or if not an agreement then stated fixed positions from both sides. This is where attendance at hearings has its advantages because face-to-face meetings can take place between parties.

A similar situation can arise if an interested party (IP) changes its position between pre-application consultation and the examination stage. Where this has occurred, ExAs have needed to explore the matter with representations from the applicant and the party in question. Depending on the stage during the examination at which the issue is raised, questioning at a hearing may be the only expeditious way to get answers from both parties.

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### **Question:**

At what stage would you expect draft DCOs to be made available for interested parties? In my experience, these are not typically available until after pre-application

### **Answer:**

It is not a requirement of the Planning Act 2008 process that a whole draft development consent order (DCO) is made available before the application is submitted. However, it is deemed to be good practice.

It may not be the case that the entire draft DCO is shared with parties prior to the application being submitted, but we would expect relevant articles, schedules, requirements and Protective Provisions to have been shared, discussed and hopefully agreed with relevant parties. This is particularly the case where another organisation would be the approving authority post-consent and is the case for deemed marine licences and Protective Provisions.

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**Question:**

In advance of the advent of mandatory biodiversity net gain for NSIPs, what does the Planning Inspectorate currently consider to be best practice for linear NSIPs in relation to BNG provision and how should this best be secured?

**Answer:**

At present a signed s106 agreement is probably the most appropriate way to secure biodiversity net gain (BNG). ExAs would need to see a signed version before giving weight to this in the planning balance.

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**Question:**

Can you please confirm that agreeing wording for limits of deviation is something that the parties can, and should, seek to agree ahead of submission of an application?

**Answer:**

Some response was given to this question during the webinar.

Taking this question to refer to drafting of a DCO article covering limits of deviation (LoD) we would expect it to have been discussed with relevant parties. Any parameters stated would need to have been discussed with consultees on the environmental impact assessment (EIA) in terms of the assessment of the worst case scenarios. A clear explanation should be provided in the Explanatory Memorandum that accompanies a DCO. However, it is the case that examination of the DCO may involve questioning by the ExA on the article wording for LoD and the limits set may be challenged or queried by interested parties (IP) requiring further testing by ExAs.

The parameters set by LoD should be clearly set out on plans in the application. The advice page states that *"a set of plans which shows all LOD (for linear and non-linear elements) on the same set should be included in applications"*.

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**Question:**

Does the ExA see its role as seeking / identifying opportunities for environmental benefit rather than just mitigation of adverse effects?

**Answer:**

Yes, where there is a policy hook, of which there are in many of the topic sections of the various National Policy Statements (NPS) and in the sections on good design and in the National Planning Policy Framework (NPPF). ExAs would expect applicants to seek beneficial opportunities as well as mitigating adverse effects. Where benefits would be delivered beyond the legal limit, and are secured, credit would be given in the planning balance.

The example given in the webinar regarding the linking of pedestrian routes outside the Order limits at the M25 Junction 28 (Slide 31) is a good example of identifying an opportunity. This chimes with the wording in the NPS for National Networks which advocates seeking improvements to reduce community severance and improve accessibility.

The BNG proposals coming forward are an example of ecological benefits which, if secured, would weigh positively in the planning balance for biodiversity, green infrastructure and landscape effects.

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**Question:**

I appreciate all impacts important and all a balance— do you add more weight to various impacts v. receptors etc eg human v. nature, cost . I not a planner - work in Env Health for many years and we deal with human impact noise, lighting etc operational and construction mainly – some transport projects say it can't go there as nature impact, too costly but in middle of or close to residential instead? We loose and we left to pick up pieces- stay noise nuisance outside planning remit we trying to pre-empt and avoid but often brick wall almost? ? sorry simplistic

**Answer:**

The question you ask is what ExAs and the Secretaries of State have to balance when considering an application. There are circumstances where a route if it were to go one way causes an effect to x, yet the alternative causes an effect to y. An applicant will normally apply assessment criteria including professional judgement in identifying the least bad environmental option in such circumstances and an ExA will likely interrogate this in reaching its own recommendation. The potential for mitigation will also have been taken into account as part of the environmental impact assessment.

The sort of situation referred to in the question would also be considered as part of the land rights (compulsory acquisition and temporary possession of land) and possibly human rights. There was an example shared in the webinar (Slide 25), where the adverse effects and interference with human rights was considered and a

bespoke traffic management plan was required to be submitted, approved and implemented post consent, as an addition to the DCO.

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**Question:**

We see a lot about BNG and offsetting loss of ecology and biodiversity. Will there ever be anything to combat loss of the historic environment and archaeology?

**Answer:**

It is important that heritage assets and archaeological features are dealt with at an early stage and that main features to be avoided are identified. This would form part of a good design approach. There must also be means to record heritage and archaeological features.

An Archaeological Written Scheme of Investigation (WSI) would usually be secured in the DCO and it would be for the ExA (taking account of comments from others) to satisfy itself that the WSI would deliver an approach towards monitoring, investigating and recording any features of archaeological interest that might be encountered during the construction phase.

It would not be possible to address loss to the historic environment and archaeology in the same way that BNG compensates for biodiversity loss. Any harm to the historic environment needs to be considered against the NPSs and the NPPF, balancing the harm that would arise against the public benefit of the proposed development.

There are examples where mitigation or compensation has included securing delivery, for example of physical interpretation of the heritage assets in the area.

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**Question:**

Is there going to be any guidance on BNG before it becomes statutory for NSIPS in November 2025

**Answer:**

We understand it is the intention to publish advice. But in the meantime, the current advice is that existing standards should be followed.

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**Question:**

As a statutory consultee we hold a GIS database and often manually ask for the DCO order limits GIS files so we can accurately cross-reference in-scope sites. If not we often can't provide accurate, precise advice. It would be good practice to allow consultees to download and import layers from interactive maps.

**Answer:**

This is referred to in the advice page - where we say "*The ability for ExAs and IPs to interrogate GIS layers electronically would be another way of achieving a full understanding of the interactions between information on the different layers. However, it would be necessary to ensure the same information could be displayed in plan form for IPs who did not have GIS capability.*"

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**Question:**

Do you have good examples of diagram/map styles to show route/site alternatives that are clear to read?

**Answer:**

Slide 43 of the webinar showed plans of the initial route corridors and the preferred route corridor for the Hinkley Point C Connection Project (HPCC). These were part of a series of plans which illustrated options reports.

It does depend on the type of alternative that is being illustrated. For route alignments, the corridor is important. For specific elements such as a substation the siting zones are important. [The Yorkshire GREEN Corridor and Preliminary Routeing and Siting Study](#) includes a range of different graphic approaches to illustrate corridors and siting areas. The colour coding was found to be useful.

Also for mini-route alignments with explanations, the tabulated small maps with associated text included in the Southampton to London Pipeline project (slides 14 to 16) were very clear and informative.

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**Question:**

Linear projects can have a spread of environmental impacts over large distances on different habitats and species and across different landscapes. Have you seen any good examples of projects that have delivered more strategic delivery of mitigation / compensation?

A follow up comment on this question was made by another webinar attendee:

Before BNG there would have been scope to deliver compensation for habitats lost to be delivered locally to the impact through a s106 possibly - in the same LPA area. But mandatory BNG would probably allow it to be delivered much further away, nationally. So mandatory BNG could remove the ability of LPA to influence compensation locations.

**Answer:**

An answer was given during the webinar.

The point in the follow up comment to the question is correct in terms of potential locations. But even with mandatory BNG, local authorities would be able to suggest locations. If local authorities have, or are aware of, initiatives nearby the proposed infrastructure that would help achieve connectivity and deliver BNG, it is important

that these are brought forward to applicants as early as possible during pre-application.

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**Question:**

How does the examination process deal with the “David and Goliath” imbalance presented by such projects where individuals, local communities and councils are struggling with applicants who are powerful global companies?

**Answer:**

The Planning Act recognises exactly that issue which is why there is specific requirements for engagement and consultation whilst the project is being designed, clearly identified inputs for Local Authorities both as local planning authority, local highway authority etc and as the elected representatives of the areas.

The availability online of advice, including consolidated advice such as today, is to make things as open as possible to all parties at each stage of the process.

The right of people and organisations to register their views before the start of the examination which assists the ExA in forming their approach and then to take part in the examination.

The Local Impact Report has a specific status in the decision making process which gives the Local Authority that role to give a considered local view especially on ensuring impacts are understood and mitigations can be tailored. The LIR then has a status in the recommendation and decision.

Further advice is available on our [Advice Pages on how to engage at each stage](#).

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**Question:**

How does the ExA decide where to hold Examination Hearings on a long linear scheme passing through multiple LAs area?

Is there an argument that there needs to be multiple venues for the Examination Hearings to ensure that no communities are disenfranchised?

**Answer:**

We do consider this very carefully. One of the key issues for us is the relatively limited number of fully accessible venues suitable for events in more rural areas. So it is not just where the venue itself is but also how easy it is to get to it including by public transport.

We operate a 'blended by default' arrangement where all our 'in person' events are also accessible online (not just viewing but participation as well) unless there are very specific reasons why such as only a small number of Affected Persons are involved for a CA event.

Similarly all our events are recorded and available as a video and a searchable transcript.

So in short, we aim to maximise the ability for Interested Parties to be able to attend and participate and to take account of the specific geography around a project and advice from the LPAs will be helpful in understand that - as well as viewpoints for site visits.

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**Question:**

The M25 example - the NMU routes out of the RLB - was this still secured via the DCO, even though it was being delivered separately? What holds the LHAs to account in terms of following through with delivery?

**Answer:**

This question was at the heart of the ExA's consideration of this matter. The provision of funding for the updated Non-Motorised User (NMU) route outside of the Order limits was committed to by the applicant. The DCO secured restrictions on the progress of the proposed development until the NMU scheme as a whole was agreed and funding allocated to respective authorities for them to deliver the areas of the NMU scheme within their control. The funding element was secured by way of a Unilateral Undertaking.

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**Question:**

Linear schemes expose variations in the planning policy framework between local authorities. Would it not be sensible for government to lead on certain issues such as community benefits for hosting a scheme, which has been talked about, but so far no action. If you agree, when do you think we might see something emerge to address this issue?

**Answer:**

Indeed, which is why the NPSs are the primary policy overview under s104 followed by the LIR. For s105 cases all are capable of being important and relevant.

In terms of community benefit, there are well established principles around how benefits which relate directly to the application and its impacts are assessed and secured such as via s106 agreements.

Benefits which fall outside this framework have been raised in consultations but we have not yet seen the outcome of how those might be assessed and if they would still be relevant to the decision on a DCO in the assessment of the case for a proposed development and its benefits / disbenefits.

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**Question:**

In relation to joint working particularly where it is between different types of organisations, is there a preference in this instance for joint Statements of Common Ground (SoCGs) as well?

**Answer:**

In general that is helpful where there is already an agreement on joint working. The aim is to make best use of resources especially for LPAs, Interested Parties and local bodies. It is a matter for them to decide but if they are planning on doing joint submissions on SoCG or any other elements then it is helpful to let the ExA know either via the Relevant Representation or directly to the Case Manager.

Where there are joint LIRs it is still acceptable to show areas of different impacts for each LPA. So it does not have to be a single 'view' but simply to assist in the analysis and drafting resource demands. Planning Advisory Service can also assist in sharing ideas on these approaches.

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**Question:**

How does this relate to linear planning in Scotland where it comes under TCPA rather than DCO regime. My assumption that most of what is being said relates to both but are there differences that need to be noted?

**Answer:**

This is related to the Planning Act 2008 and so only applies directly to England and Wales (in respect of certain energy and storage schemes). We hope it does also represent good practice which may be useful elsewhere.

We have not yet received any applications for cross-boundary networks between England and Scotland but if those did come forward we would aim to agree good practice with all the relevant parties. Each section north and south would be dealt with under the respective regimes but ideally would cover similar information for consistency.

We do liaise with the Chief Planners across all the nations in the UK and Ireland to share ideas as well so please do share any examples of good practice published.

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