



Chartered
Institute of
Environmental
Health

Consultation on a draft National Policy Statement for waste water infrastructure

Response to Defra's consultation

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The Chartered Institute of Environmental Health

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Consultation on a Draft National Policy Statement for Waste Water

Introduction

We refer to the draft National Policy Statement (NPS) for Waste Water published by the Department in November and the comments of the Chartered Institute, a statutory consultee under the Infrastructure Planning (National Policy Statement Consultation) Regulations 2009, follow below.

The consultation process

Some of our comments are ones of principle while others are of detail but to begin, and in general, we regret that what is correctly described as a Framework document, i.e. for planning decisions on all major waste water infrastructure projects for the foreseeable future, has, included within it, considerations relating to two specific projects (the replacement of the Deephams STW and the Thames tunnel). Leaving aside whether the latter should be considered under this regime at all, it would seem to have been easy to separate those and we think a purely generic Framework would have been more appropriate while the application then of its principles to the two projects would have been clearer too.

That the draft Statement and its accompanying documents are in total so long (at over 700 pages and, partly in consequence of those inappropriate inclusions) is also regrettable; we understand the need to be comprehensive, nevertheless, they do test the capacity of the less well-resourced consultees, and not least those with broad remits such as ourselves and it is for that reason that our comments focus on the Statement in preference to the other documents. That said, it is helpful that it broadly follows the format of the other NPSs published to date and that it is clearly written.

Policy and discretion

That, however, prompts a wider comment, that is that we think the NPS should generally be more directory in its language, i.e. the purpose of policy being more than mere guidance, there should be more "must"s than "may"s or "should"s in the text, directing the IPC more in what (if not also how) to consider rather than, apparently, leaving so much to its discretion or to what might be suggested to it by participants in a particular application. That is necessary in our view both to ensure thoroughness and so that its decisions reflect a truly strategic view.

The Need for Waste Water Infrastructure

Turning to the draft Statement, while section 2 is very interesting, some of its content may not find universal agreement and its relevance to the projects encompassed by the NPS is

not always clear. That is to say that the government's views on the need for waste water infrastructure in general are not wholly relevant to the provision of the large plant described in the 2008 Act and which alone are properly the subject of the Statement. Whereas the justification for those is found in only a couple of paragraphs, at the least that justification might be made more strongly (a point relevant to para 5.1.1 (iii)); alternatively, and moreover in the light of the fact that only one project has been identified as falling within the parameters of the NPS anyway, the need for one at all is surely in doubt.

Notwithstanding, and a point we have made in respect of the other draft NPSs published so far, in the absence of a national spatial plan which integrates plans especially for jobs, housing and tackling climate change with those for energy, transport and water, we think that all the NPSs need to reflect spatial planning principles and to take more overt account of other planning guidance. That is necessary if the nation is to be certain that it will get the right infrastructure in the right place and address national needs in ways which are also locally sensitive.

Participation

Having made a point about the difficulty of participation in this consultation process, that of Local Planning Authorities (LPAs) in the IPC's processes is, of course, a crucial part of that, in particular in the production of Local Impact Reports. Such Reports are likely to require considerable effort on the part of planners, supported by their environmental health colleagues and while both local authority manpower generally is under increasing pressure and the government has said it will not provide additional funding for LPAs for this purpose, the IPC needs guidance on how to proceed where a LPA is unable to take part appropriately. The consequence of such a failure would not lie only in the consideration of technical details, of course, but decisions of the IPC based on inadequate or erroneous reports will be open to legal challenge. Not least, it would concern our national obligation to facilitate adequate public participation in the process too.

This might also be the appropriate place to say that while Local Impact Statements by LPAs are likely to have some focus on human impacts, and health will be a material consideration in applications anyway, whereas Environmental Impact Assessments will consider the effects of developments on humans only as part of a wider basket of effects, we would like to see a recommendation that Health Impact Assessments, using the WHO's wide definition of "health", should be expressly required from applicants. Though lacking the legislative imperative of EIAs, in our view, separate HIAs are necessary to avoid the possibility of human health concerns being overshadowed by those for the natural environment and since the full breadth of the concept of "well-being" (though acknowledged in para 5.10.1) is unlikely to be reflected otherwise. In support of that proposal, we note that para 5.2.2 suggests that social and economic effects should be given separate prominence. If it might be thought that raises a barrier to developments, we are happy to make it clear that we

think the public health imperative for adequate waste water infrastructure is actually underplayed in section 2 of the draft.

Turning now to the detail of the Statement, our comments focus on those parts in which we have particular expertise i.e. those parts concerning pollution in its various forms.

Pollution control – general

Reflecting current national guidance, the NPS repeats the explanation given in PPS23 about the relationship between planning and pollution controls, including the ambiguity of that. While it is correct to say that they are separate, that the planning process is concerned with the principle of land use while the various pollution control regimes are concerned with limiting consequent harmful emissions, where that use is a polluting use the planning process nevertheless implicitly consents at least the residual pollution and is necessarily thereby part of the pollution control regime. Acknowledging they are complementary, the draft NPS (in para 5.7.7) goes some way towards admitting that where it encourages applicants to bring forward their applications for development consent in parallel with those for environmental consents but we believe strongly that this should be a requirement.

If it is not, such that the proposed polluting processes have not been identified and assessed in detail, it will be impossible both for the LPA to provide an adequate Local Impact Statement or, consequently, for the IPC to identify potential “residual pollution”, i.e. that not covered by predictive pollution control regimes (or, at the time, incapable of sufficiently accurate prediction), and which therefore needs to be controlled through planning requirements. In the same cause, we would like to see a reversal of the advice in para 5.7.9 to say that development consent should not be granted unless there is good reason to believe that any necessary operational pollution controls etc *will* be granted.

In some cases, operational controls will allow regulators to require operators to demonstrate continuing compliance with emission limits but where not, we would like to see advice to the IPC to consider applying equivalent planning requirements to consents. Alternatively, applicants should be required by a development consent obligation to fund the regulator to undertake necessary monitoring.

Common law nuisance and statutory nuisance

We welcome the Department's decision to place the paragraphs in the NPS explaining the effects of section 158 of the 2008 Act (5.11.1 – 5.11.3) after those on health since that underlines what many nuisances are about and the main (though not only) reason why they need to be controlled. As written though, this section does not explain the concept of nuisance, nor why (as the title of section 5 suggests it should) nuisances might be factors for examination and determination of applications, rather it discusses the potential defence of statutory authority. In that case it might be more logical if this section followed those

sections of the guidance dealing with particular varieties of nuisance, i.e. sections 6.3 (on odour), 6.9 (on noise) and 6.12 (on dust, artificial light etc). Those would also attract more attention if they were brought together in a coherent series.

That said, and without wishing to be too pedantic, while paragraph 5.11.1 correctly states that the section grants authority only for "carrying out development" it would be helpful to make it explicit that that does not extend to the development's operational life. The importance of that lies, of course, in drawing developers' attention to the need (so as to avoid future litigation) to minimise the potential for nuisances *ab initio*. Whereas we also welcome the guidance that, under the doctrine, immunity flows only to nuisances which are inevitable, for completeness it might be added that operators must also take all practicable steps to abate them. The significance of that would be to draw to readers' attention that while what may be practicable is likely to change with, for example, advancing abatement technology, the defence will not remain available to them unless they keep abreast of that. It could also be important for the IPC to understand when framing any provision under s.158(3).

Air quality

Para 6.11.1 notes correctly that large waste water infrastructure can contribute to local air pollution problems, odorous emissions and construction dust (see below) aside, in particular from associated combustion processes. These should be considered as part of every Environmental Statement and any additional such contribution should raise concerns. Whether or not they risk breaching local air quality limits, they should be minimised.

Odour

Odour nuisance is, of course, a real risk from waste water installations. Even at sub-nuisance levels it can be unacceptable to neighbours for considerable distances around and we are glad that it is given its own section in this NPS. Whereas we accept that "accidents do happen" (though – see para 6.3.15 - there should be a requirement that Odour Management Plans include provision for "reasonable worst cases", i.e. of breakdowns) we do not recognise the impact exposure standard suggested in para 6.3.7 and would suggest instead that the norm should be one of no discernible odour at the plant boundary. That should be quite achievable in a modern plant and all that said, this is a clear case where the defence of statutory authority (if, which we dispute, it applies to the on-going operation of the plant anyway) should be disappplied.

Dust, Artificial light etc

As the NPS states, large developments of the kind envisaged almost inevitably bring with them some additional dust etc, during construction together with needs for lighting for operational and security purposes and though we are not convinced that all the potential impacts on amenity for local communities are necessarily unavoidable we are pleased to see

the emphasis in para 6.12.3 on acceptability and in para 6.12.7 on future-proofing. This is another case where, through careful design and operation, it should be quite possible to obviate the possibility of nuisances arising and where, consequently, the defence of statutory authority should be disapplied.

Land

Though the NPS devotes some space in section 6.8 to issues of land use, that focuses on amenity and we would like to see more explicit consideration of contamination issues than the single sentence in 6.8.8. Though the developments contemplated by the NPS will be on previously unused sites (hence the importance of considering the loss of amenity space, which we acknowledge for health reasons), others will be on sites adjacent to existing similar developments or, as para 6.8.3 encourages, re-use older sites which may exhibit some contamination whether directly because of their previous use or through migration. Though at the same time, their future uses may suggest this will present little risk to some potential receptors, i.e. people or buildings, that may not be true for others, e.g. groundwater (and contamination receives no mention in section 6.2 either), and the process of development itself may increase that risk. In such cases, recently highlighted examples (e.g. in Corby) illustrate the need for care in their remediation apart from the general principle that that should be as sustainably done as possible. Similarly, design opportunities should be taken where possible to minimise soil-sealing and provide for sustainable drainage.

Para 6.8.8 suggests that development of the best agricultural land should be avoided but later, in para 6.8.15, that "little weight" should be given to the loss of lower-graded land. While, clearly, the greatest protection must be given, all else being equal, to the best quality land, the need for greater food sufficiency, let alone for energy crops suggests that even poorer land deserves more consideration than that.

Noise

Noise too is a potential cause of nuisance. It would make more sense if the paragraphs on noise (section 6.9) preceded those on the defence of statutory authority (in section 5.11) which applies to all nuisances. Among those, noise is probably the most intrusive and, as the NPS notes, there is a growing body of evidence that it can cause a variety of non-auditory effects of which annoyance and sleep disturbance are only two. While, therefore, it is imperative to control excessive noise effectively and mention of the government's Noise Policy for England is welcome that nevertheless lacks benchmarks and reference could usefully also be made to recent WHO Guidelines here.

Like other nuisances too, the very existence of noise can alter the character of an area against which the occurrence of further nuisance is assessed, giving rise to "creep", and we are concerned that the first bullet point in para 6.9.11 suggests that only "*significant* adverse impacts on health..." should be avoided; quite apart from the uncertainty in this statement, it appears automatically to condone lesser adverse health effects whereas on site-specific

consideration those should usually be avoidable. We feel strongly, accordingly, that consents should be dependent on *all* noise impacts on sensitive locations being minimised and that noise limits should be applied as a matter of course. In the case of construction and demolition works it ought to be noted that the provisions of the Control of Pollution Act 1974 will apply.

We hope these comments will assist.

