

Bassetlaw District Council

Planning Committee

13th December 2023

Report of the Head of Regeneration

Development Management

Scheme of Determining Planning Applications

Cabinet Member: Identity and Place

Contact: John Krawczyk

1. Public Interest Test

The author of this report has determined that the report is not confidential.

2. Purpose of the Report

- 2.1 Bassetlaw District Council has received notification of the submission of three Nationally Significant Infrastructure Projects (NSIP) to the Planning Inspectorate that will require Local Authority input in the role of host authority. Public consultation is also being undertaken in respect of another two proposals.
- 2.2 NSIPs are considered by the Planning Inspectorate for ultimate decision by the Secretary of State. This is known as a Development Consent Order process and sits outside of the realms of the Town and Country Planning Act.
- 2.3 The role of the local authority within the DCO process is set out within the Planning Act 2008.
- 2.4 This report sets out the role that the Local Authority will undertake in the DCO process and proposes a route for decision making and officer delegation.

3. Background and Discussion

- 3.1 The Council are currently considering three Nationally Significant Infrastructure Projects and have been made aware of two further projects where Bassetlaw District Council will perform the role of one of the host authorities in the Development Consent Order process. These projects being:

- West Burton Solar Project
- Cottam Solar Project
- Gate Burton Energy Park

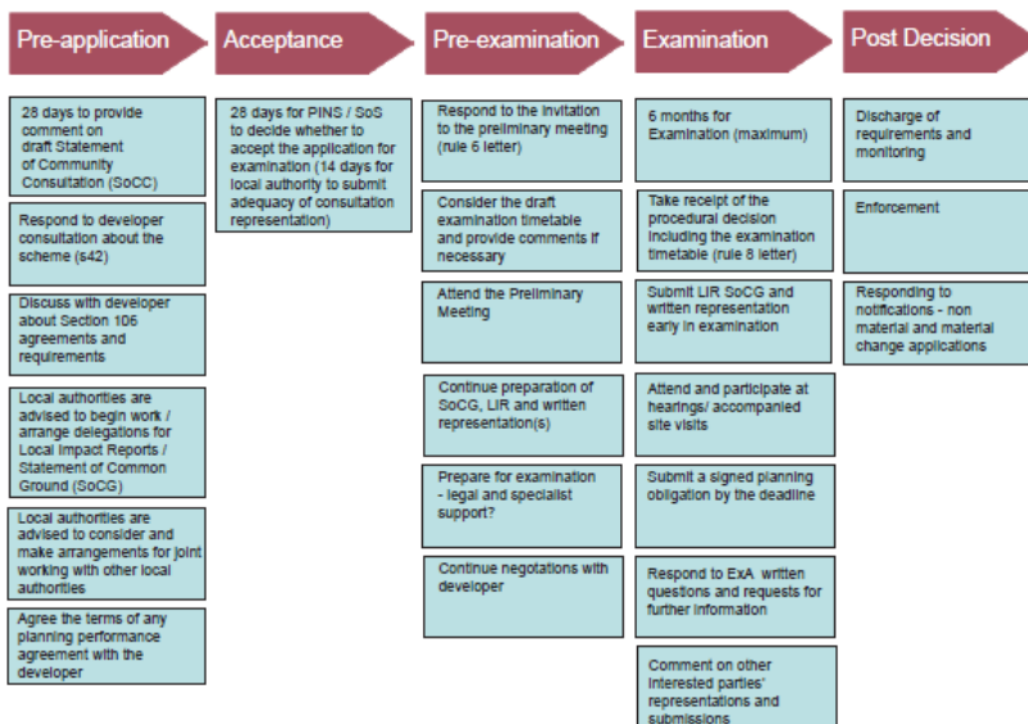
At non-statutory consultation stage;

- Tillbridge Solar Project
- One Earth Solar Project

- 3.2 The Planning Act 2008 introduced the Development Consent Order process to streamline decision making process for nationally significant major infrastructure projects with the aim of making the process fair and faster for communities and applicants alike.
- 3.3 Instead of making an application for planning permission to the Local Planning Authority under the Town & Country Planning Act, the applicant instead applies for a Development Consent Order (DCO) directly to the Government. The application will be considered by the Government's Planning Inspectorate, who will make a recommendation to the relevant Secretary of State who then makes the final decision. So, whilst there are a number of categories of NSIP projects, the most common in Bassetlaw are solar renewable energy schemes of 50MW or more power generation. These are determined by the Secretary of State for Business, Energy and Industrial Strategy.
- 3.4 There are six stages of the National Infrastructure Planning process. These are:
1. Pre-application: Before submitting an application, potential applicants have a statutory duty to carry out consultation on their proposals.
 2. Acceptance: When the applicant submits an application for development consent the Planning Inspectorate, on behalf of the Secretary of State, must decide whether or not the application meets the standard required to be accepted for examination.
 3. Pre-examination: This stage allows Interested Parties (including members of the public) to register and make a representation to the Planning Inspectorate on the proposals.
 4. Examination: The Planning Inspectorate has up to six months to carry out the examination. The Planning Inspectorate will consider all important and relevant matters with questions posed and answered through a hearing or series of hearings.
 5. Recommendation and Decision: Within 3 months of the examination closing, The Planning Inspectorate prepares a report on the application for consideration by the relevant Secretary of State who then decides whether to grant or refuse development consent.
 6. Post Decision: Once a decision has been issued by the Secretary of State there is a six week period where this can be challenged.
- 3.5 Bassetlaw District Council is a host authority for the three current NSIP proposals for solar farm development. The role of host authority is set out in the Planning Act 2008. Participation is not obligatory but is strongly advised by the Planning Inspectorate. The local authority has the opportunity to provide an important local perspective at the pre-application stage, in addition to the views expressed directly to the developer by local residents, groups and businesses. Local authorities will also become responsible for discharging many of the requirements (akin to planning conditions) if development consent is granted. Local authorities are also likely to have a role in monitoring and enforcing many of the DCO provisions and requirements.

4. The Role of Local Planning Authorities

- 4.1 The diagram below sets out the five (out of six) stages of the DCO process in which the local host authorities have a direct role.



- 4.2 As set out above, one of the early tasks at the pre application stage is for the local authority to consider and arrange the necessary delegations for certain elements of the process.
- 4.3 There are a number of key documents that the local authority have the opportunity to respond to.
- 4.4 We have considered published advice and taken guidance from colleagues within both Nottinghamshire and Lincolnshire that have worked on similar DCOs previously to assist in proposing a delegation and decision route for NSIPs in Bassetlaw.
- 4.5 It is recognised that during the DCO process and specifically the examination, there will be numerous deadlines for local authorities and other interested parties to submit further representations. This will require a swift response and response times are set out in the Planning Act 2008.
- 4.6 The Planning Inspectorate and NSIP process operates to a strict timetable with submissions typically required to a set deadline. Planning Inspectorate guidance (Advice Note two: The role of local authorities in the development consent process) for Local authorities, it suggests that there will not be time within the process to seek committee approval for all required responses and representations, therefore ensuring that adequate delegations are in place is essential. The guidance states "*Some local authorities may want to seek their members' approval for certain key examination documents such as the LIR, written representation or SoCG, although this is not required. The Examining Authority's (ExA) main concern is that once the examination timetable is published, interested parties adhere to the deadlines in it. Late submission of an important document such as the LIR or SoCG may prejudice the ability of other interested parties to consider and comment on its content, potentially disrupting the examination timetable and resulting in additional costs for other interested parties.*" This guidance goes on to state "*There is unlikely to be time to seek committee approval*

for representations made by a local authority during the examination. In general terms a local authority must assume that it won't be possible for the examination timetable to be structured around its committee cycle." It is therefore considered that it will not be appropriate to seek member approval for the Local Impact Report (LIR) and the Written Representations (WR), which will both be submitted during the examination stage.

- 4.7 The LIR is defined as 'a technical report giving details of the likely impact of the proposed development on the authorities' area (or any part of that area)'. Local Planning Authorities can cover any topics they consider relevant to the impact of the proposed development including local planning considerations. The examiner and the Secretary of State must have regard to any LIR submitted by a relevant authority. The Planning Inspectorate Guidance sets out that 'A Written Representation is the most appropriate document for a Local Authority to set out its view on the application i.e. whether or not it supports the application and its reasons'.
- 4.8 Appendix 1 sets out the full list of documents that the local authority must prepare / agree a response to, at what stage of the process these are required and the proposed decision route.
- 4.9 It is proposed that the LIR and WR's are prepared by Officers, with input from technical specialists, and submitted to the Planning Inspectorate under delegated authority.
- 4.10 It is clear that the Planning Inspectorate prioritises the timely submission of the documents and it is not a requirement to seek Committee approval for such representations. The responses provided to the Planning Inspectorate will be based upon the technical advice of the relevant technical experts such as the Nottinghamshire County Council as the Highway Authority and Lead Local Flood Authority and Lincolnshire County Council Archaeology. Advice not readily provided by statutory consultees, such as landscape impacts, will be procured through an independent consultant where necessary.
- 4.11 Evidence will have to be presented during Issue Specific Hearings. The guidance states "*Issue specific hearings are inquisitorial and the ExA will generally ask questions of the participants. Cross examination is an exception but can be requested by an interested party. In such cases the ExA will decide whether or not cross examination of a matter is needed and would benefit the examination of the application. If the ExA decides to allow cross examination it will endeavour to notify the relevant parties in advance so they can prepare for it.*"

4. Implications

- a) For service users

The proposed delegation would allow technical representations to be submitted to the Planning Inspectorate in a timely manner and ensure they are fully considered by the determining authority.

- b) Strategic & Policy

The DCO proposals will deliver significant amounts of renewable energy. Enabling the proposals to be considered in a timely manner will assist delivering the Bassetlaw 2040 Vision by supporting the pillars of Identity, Skills, Business and Environment

- c) Financial - Ref: 24/784

The resourcing of this process is met through the applicant entering into a Planning Performance Agreement, therefore there are no financial implications arising from this report

d) Legal – Ref: 141/11/2023

There are no legal implications arising from this report

e) Human Resources

There are no human resources implications arising from this report.

f) Climate change, Environmental

The current proposals that require the Council to consider how it engages in the DCO process, subject to approval, would deliver significant amounts of renewable energy. The scale of the proposals, measured in megawatt production capacity is the determining factor in the proposals being considered by government through the DCO process (each are over 50MW). We understand that the proposals are driven by the governments net zero carbon strategy, taking advantage of the unique opportunity afforded by the decommissioning of the coal fired power stations at Cottam, West Burton and High Marnham.

g) Community Safety, Equality and Diversity

There are no Community Safety, Equalities or Environmental implications arising from this report. An Equalities Impact Assessment screening opinion has been undertaken and is appended to this report.

h) GDPR

There are no data protection implications arising from this report.

i) Whether this is a key decision, and if so the reference number.

This is not a key decision.

5. Options, Risks and Reasons for Recommendations

5.1 The Scheme of Delegation ensures that the decisions in respect of planning applications are transparent, accountable and made a timely manner. It should be remembered that Bassetlaw District Council is not the determining authority for NSIP applications. Any reference to the Head of Regeneration also means the Head of Planning and Place (following the recently approved Senior Management Restructure).

5.2 There are two options available;

1. Agree to the recommendation to delegate the representations of the Local Planning Authority to NSIPs to the Head of Regeneration which will ensure the timely submission of representations by the Local Planning Authority.
2. Require documents such as the Statement of Common Ground, Local Impact Reports and Written Representations to be approved by Planning Committee prior

to submission to the Planning Inspectorate, which may not meet the deadlines set by the Planning Inspectorate unless Extraordinary Planning Committees are to be scheduled.

- 5.3 The Planning Inspectorate Guidance is clear that Planning Committee approval is not compulsory within the NSIP process. The representations of the Local Planning Authority will be based on technical advice and expert evidence provided by the relevant statutory consultees who will present their evidence as required during the issue specific hearings. Should a Committee decision be taken not to accept the technical advice, Members would be expected to present their evidence to the Planning Inspectorate during the hearing sessions given that Planning Committee is a Member decision making forum.
- 5.4 Given the technical, evidence-based nature of the representations that must be made to the Planning Inspectorate in respect of NSIP applications it is considered that it is not necessary to seek Committee Approval.

6. Recommendations

- 6.1 That Planning Committee agree the decision and delegation protocols set out at Appendix 1 when acting in the role of “host authority” for Nationally Significant Infrastructure Projects, and in doing so, delegate the following responsibilities to the Head of Regeneration:

- Preparation and sign off of Planning Performance Agreement
- Preparation and sign off of S106 Agreement
- Statement of Community Consultation (SOCC) response
- Draft Preliminary Environmental Impact Report response (draft Environmental Statement)
- Environmental Statement (submission version) – ongoing dialogue
- Adequacy of Consultation Response (AoC)
- Local Impact Report (LIR) & Development Consent Order (DCO) including draft Requirements
- Statement of Common Ground (SoCG)
- Examination Participation including written representation submissions
- Discharge of requirements and monitoring

The current Scheme of Delegation for Determining Planning Applications is attached as Appendix 2.

Background Papers

National Infrastructure Planning Advice Notes

Location

<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

Equality Impact Assessment

Part 1: Screening

Version: 2022 2.3

Before undertaking this EIA please read the following guidance

An equality impact assessment (EIA) is an evidence-based approach that helps the Council determine if its policies, strategies, plans, practices, events and decision-making processes are fair and do not present barriers to participation or disadvantage. The first stage of the process is known as 'screening' and is used to come to a decision about whether and why further analysis is – or is not – required.

Equality Duties to be taken into account in this screening include:

Prohibited Conduct under the Equality Act 2010 includes:

- Direct discrimination - treating one person worse than another person because of a protected characteristic*
- Indirect discrimination - a rule or a policy or a way of doing things in place which has a worse impact on someone with a protected characteristic than someone without one.
- Harassment – you cannot treat people in a way that violates your dignity, or creates a hostile, degrading, humiliating or offensive environment.
- Victimisation – You cannot treat a person unfairly for taking action under the Equality Act

Positive Discrimination is the act of treating someone more favourably because they have a protected characteristic, and is generally unlawful under the Equality Act 2010.

The law however permits Positive Action if it is proportionate to overcome disadvantage, meet needs and tackle under-representation.

***The following characteristics are protected under the Equality Act:**

Age, Disability, Sex, Gender Reassignment, Race, Religion or Belief (including No Belief), Sexuality, Marriage and Civil Partnership (applies only to work matters, and Pregnancy and Maternity (including breastfeeding).

You're disabled under the Equality Act 2010 if you have a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on your ability to do normal daily activities.

Public Sector Equality Duty

Services providing public functions must have due regard to the need to:

- **Eliminate unlawful discrimination, harassment and victimisation;**
- **Advance equality of opportunity and**
- **Foster good relations between different groups.**

Human Rights include: Rights under the European Convention include not to be subjected to degrading **treatment**; **right to a fair trial** (civil and criminal issues); **right to privacy** (subject to certain exceptions e.g. national security/public safety, or certain other specific situations); **freedom of conscience** (including religion and belief and rights to manifest these

limited only by law and as necessary for public safety, public order, protection of rights of others and other specified situations); **freedom of expression** (subject to certain exceptions); **freedom of peaceful assembly and to join trade unions** (subject to certain exceptions); **right not to be subject to unlawful discrimination** (e.g. sex, race, colour, language, religion, political opinion, national or social origin); **right to peaceful enjoyment of own possessions** (subject to certain exceptions e.g. to secure payment of taxes or other contributions or penalties); **right to an education**; **right to hold free elections by secret ballot**. The European Convention is given effect in UK law by the Human Rights Act 1998.

National Adult Autism Strategy (Autism Act 2009; statutory guidelines) including: To improve how services identify and meet needs of adults with autism and their families.

The Digital Accessibility Regulations 2018 came into force for public sector bodies on 23 September 2018. They say **you must make your website or mobile app more accessible** by making it '**perceivable, operable, understandable and robust**'. You need to include and update an accessibility statement on your website.

Care Leavers and Armed Forces: From 2023 the Council will include Care Leavers and Armed Forces Personnel, veterans and their families in the EIA process. People with care experience disproportionately experience homelessness, loneliness, unemployment, poverty and a range of other disadvantages.

As part of the **Armed Forces Covenant**, we acknowledge and understand that those who serve or who have served in the armed forces, and their families, should be treated with fairness and respect in the communities, economy and society they serve with their lives.

1. Name of policy/activity/project/practice

Amendment to the Scheme of Delegation for Determining Planning Applications

2. Screening undertaken

Person undertaking EIA: John Krawczyk

3. Brief description of policy/activity/project/practice:

Including its main purpose, aims, objectives and projected outcomes. Who is it intended to affect or benefit (the target population)? How do these fit in with the wider aims of the organisation? i.e. Is it linked to BDC's Corporate Plan? Service Plan? Other?

The report proposes an amendment to the Scheme of Delegation for Determining Planning Applications, with the intention being to ensure that the relevant information in respect of DCO applications is provided to the determining authority, the Planning Inspectorate, in a timely manner.

There is a risk that members of the public in general may feel excluded from the process if reports relating to DCO Applications are not presented to Planning Committee. However, the Council is not the determining authority and the public are able to engage with the process directly with the Planning Inspectorate who do determine the applications and consider all representations made.

4. Impact

How will the aims affect our duty to:

- Promote equality of opportunity?

- Eliminate discrimination, harassment and victimisation?
- Promote good community relations?
- Promote positive attitudes towards people with protected characteristics?
- Encourage participation of people with protected characteristics?
- Protect and promote Human Rights?

For example, think about it from the perspectives of different groups in society. Does it cause harm or a benefit to any group(s) differently to others? Will it differentially affect:

- Black, Asian or other ethnic minority and/or cultural groups?
- Disabled people? And their carers?
- Transgender people?
- Men and women?
- Lesbians, gay men and/or bisexual people?
- Different religious communities/groups?
- People of a particular age e.g. older people or children and young people?
- Care Leavers and people with care experience
- Armed Forces Personnel, veterans and their families
- Any other groups?
- People with flexible or agreed working patterns?

Are there any aspects, including how it is delivered, or accessed, that could contribute to inequalities? (This should relate to all areas including Human Rights, Care Experience and Armed Forces Personnel, veterans and their families.)

There are no negative impacts on any protected characteristic or assessment factor.

Within this table, state whether the policy or function will have a positive or negative impact:

Factor	Positive Impact	Neutral Impact	Negative Impact	Comments
Age		Neutral		No impact
Disability		Neutral		No impact
Sex		Neutral		No impact
Gender reassignment		Neutral		No impact
Race		Neutral		No impact
Religion or belief (including no belief)		Neutral		No impact
Sexuality		Neutral		No impact
Marriage and Civil Partnership (applies only to work matters)		Neutral		No impact
Pregnancy and maternity (including breastfeeding)		Neutral		No impact
Socio economic (including rural and poverty)		Neutral		No impact
Human Rights		Neutral		No impact
Care Leavers and people with Care experience		Neutral		No impact
Members of the Armed Forces, veterans and their families		Neutral		No impact

There is a risk that members of the public in general may feel excluded from the process if reports relating to DCO Applications are not presented to Planning Committee. However, the Council is not the determining authority and the public are able to engage with the process directly with the Planning Inspectorate who do determine the applications and consider all representations made.

If you have identified negative impacts a FULL assessment (Appendix 2) MUST be completed. (Not required).

6. Evidence Base for Screening

List the evidence sources you have used to make this assessment (i.e. the known evidence) (e.g. Index of Multiple Deprivation, workforce data, population statistics, any relevant reports, customer surveys Census 2011, equality monitoring data for the service area.)

Bassetlaw Vision 2040

<https://www.bassetlaw.gov.uk/about-us/bassetlaw-vision-2040/>

National Infrastructure Planning – The Process

<https://infrastructure.planninginspectorate.gov.uk/application-process/the-process/>

National Infrastructure Planning Advice Notes

<https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/advice-notes/>

Are there any significant gaps in the known evidence base? If so what are your recommendations for how and by when those gaps will be filled?

- No significant gaps.

7. Consultation

Describe what consultation has been undertaken on this function or policy, who was involved and the outcome.

We have considered published advice and taken guidance from colleagues within both Nottinghamshire and Lincolnshire that have worked on similar DCOs previously to assist in proposing a delegation and decision route for NSIPs in Bassetlaw.

I am satisfied with the results of the EIA.



John Krawczyk
Development Team Manager

EIA Ref: SDPA-11/23