

Oxford to Cambridge Expressway
Corridor Assessment Report
***Appendix F Supplementary Consenting
Information***

PCF Stage 1

May 2018

HE565628-JAC-GEN-SCHW_MT-RP-ZM-0109 | P00

Contents

1.	Special category land, Crown land and Green Belt	1
1.1	Special category land.....	1
1.2	Crown land.....	3
1.3	Green Belt.....	4
2.	Consentability	6
2.1	Consentability definition	6
2.2	Consenting process	6
2.3	National Networks National Policy Statement (NN NPS)	8
2.4	Other national policy	10
2.5	Local policy	10
3.	National Networks National Policy Statement (NN NPS) Table.....	12
	Glossary	17

1. Special category land, Crown land and Green Belt

1.1 Special category land

It is important to describe the implications of special category land (SCL) relating to the Project, in order to understand the relevant decision-making processes which may be necessary to overcome planning policy constraints and/or the legal tests to enable the acquisition of land for the Oxford to Cambridge Expressway. It will also assist an understanding of considerations which may be relevant in the corridor and route selection process, leading to submission of an application for development consent under the processes set out in the Planning Act 2008.

Special category land (SCL) is defined in the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 and includes the following categories:

- Common land (including town or village green)
- Open space
- National Trust land
- Fuel or field garden allotments

At this early stage of the Project it is not possible to know whether SCL would be affected as this depends on the choice of corridor and route options within the preferred corridor. Each of the corridors includes SCL, but the width and extent of corridors means that it is possible to avoid SCL at this stage, although at future stages of the Project SCL may need to be considered in more detail in relation to policy constraints and/or issues relating to the acquisition of land.

An explanation of each type of special category land is set out below followed by the process and potential constraints regarding the acquisition of special category land.

1.1.1 Common land

Areas of common land (including town or village green) are present within each corridor options. Common land is land over which certain people have traditional rights, for example to graze livestock or collect firewood. Common land dates back to the Inclosure Acts from 1773 onwards and represents about 3% of the land area of England, of which 88% carries one or more national statutory designation, for example National Park, Area of Outstanding Natural Beauty, Site of Special Scientific Interest (SSSI) or Scheduled Ancient Monument. Over half of commons in England are designated as SSSI.

The Commons Act 2006 provides the legislative framework for common land, its designation, protection and management. Along with earlier legislation on common land, it enables government to safeguard commons for current and future generations to enjoy, to ensure the special qualities of common land are properly protected (including its open and unenclosed nature), and to increase the number of SSSIs in favourable condition.

Section 16 of the Commons Act 2006 enables the owner of an area of common land to apply for its deregistration. Such deregistration is contingent on a suitable area of exchange land being provided and a number of strict requirements and safeguards being met. The suitability of any exchange land is key to the successful application for deregistration. Key also is the requirement that the applicant is the owner of all of the release land and exchange land.

1.1.2 Open space

Areas of open space are present within each corridor. The legal definition of 'open space' is more complex as it relates back to legislation more than 100 years old, but in practice it normally means a park or play area that is managed by a local authority, however it can have wider definition. It may be worth investigating if a local authority golf course is open space.

1.1.3 National Trust land

The National Trust Act was passed in 1907 and a number of successive Acts have been introduced which have retained the National Trust's (NT) statutory power to declare some land unavailable for sale or purchase against the Trust's wishes without special parliamentary procedure (SPP). The NT is now one of the largest landowners in the country, owning countryside and open space as well as large estates and country houses.

1.1.4 Fuel or field garden allotments

Allotments are present within each corridor, but it is not clear at this stage whether they include fuel or field gardens. Fuel or field garden allotments consist of land appropriated for the use of the poor and now mostly held and administered by allotment authorities. The type of allotments will be confirmed at future stages of the Project where appropriate, including which are subject to legislation relating to SCL.

1.1.5 The acquisition of special category land

Common land, open space, National Trust land and fuel or field garden allotments are considered in this section in relation to legal considerations concerning the acquisition of land, rather than policy. Highways England, as the Project promoter, has the power to acquire land under the Planning Act 2008. Section 122 of the Planning Act 2008 indicates that a Development Consent Order (DCO) may include an authority to acquire land by compulsory acquisition only if the following conditions are met:

- a) The land is required for the development to which the consent relates.
- b) The land is required to facilitate or is incidental to that development.
- c) It is replacement land which is to be given in exchange for the order land under sections 131 or 132 (see below).

There must also be a compelling case in the public interest for the land to be acquired forcibly under section 122 of the Planning Act 2008. These restrictions need to be taken into account when consideration is given to the temporary or permanent

acquisition of land. The 'compelling case' requires justification of the Project in general and each parcel of land to be acquired in the Statement of Reasons to be submitted as part of the application for development consent to the Examining Authority.

SPP is a process relating to compulsory acquisition of certain types of SCL (which include land forming part of a common, open space, or fuel or field garden allotment) requiring to be subject to further scrutiny by Parliament before it can come into effect. SPP enables directly affected persons, including companies, to petition Parliament where it is proposed that certain special categories of land are to be acquired by compulsory acquisition. SPP is a lengthy process which takes about a year or more based on recent cases and should be avoided if possible, otherwise there is a high risk that the Project timescales will not be met.

The acquisition of common land, open space and fuel or field gardens allotments can now be secured by sections 131 (land) and 132 (rights) of the Planning Act 2008, as amended significantly by the Growth and Infrastructure Act 2013. Prior to that, SPP was automatically triggered by proposals to acquire such land against the owner's will, but there are now legal tests that can potentially avoid the need for SPP. The legal tests are similar across sections 131 and 132 which state that common land, open space and fuel or field garden allotments, to be acquired as matter of public interest in relation to a DCO, will be subject to SPP unless the Secretary of State is satisfied that the legal tests for replacement land has been met and has been recorded in the DCO.

In view of the need to satisfy these stringent legal tests and also the fact that many areas of common land are covered by national statutory designations (as mentioned above), the compulsory acquisition of common land should be avoided if at all possible. However, open space and fuel or field garden allotments should be considered on a case-by-case basis as there are additional circumstances in which SPP does not apply.

Section 130 of the Planning Act 2008 deals with land belonging to the National Trust inalienably, which means land which cannot be purchased or sold. However, not all National Trust land falls into this category and may not be at risk from SPP. An application for development consent is subject to SPP if it proposes the compulsory acquisition of such inalienable land and the National Trust objects and does not withdraw its objection by the end of the examination stage. It would be preferable to avoid National Trust land in view of this and due to the high-level environmental constraints typically relating to landscapes and cultural heritage on National Trust land and property.

1.2 Crown land

The provisions in respect of Crown land are set out in section 135 of the Planning Act 2008 (as amended). In brief, the acquisition of Crown land can only be included in an application for development consent if the Crown consents to it. In practice, the consent of the Crown should be agreed before the application is submitted to the Examining Authority. At the current stage of corridor selection, there is Crown land in each of the corridor options (apart from the Common Corridor South of Oxford), but it

is possible to avoid it. If it were necessary to consider the possible acquisition of Crown land in relation to the Project at future stages, including route selection, then knowledge of whether such consent is likely to be forthcoming would be a key consideration in the selection process. Crown land, which may include Ministry of Defence (MOD) land, may be possible to acquire given that the MOD has disposed of surplus land in recent years.

1.3 Green Belt

Each of the corridors contain statutory Green Belt, and include areas of Oxford Green Belt and Metropolitan Green Belt. In addition, the Common Corridor North East of Milton Keynes also includes Cambridge Green Belt. Taking into account the extent of Green Belt across the corridors, it is not possible for the Oxford to Cambridge Expressway to avoid crossing Green Belt.

Paragraph 5.164 of the National Policy Statement for National Networks (NN NPS) states that *“the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.”* The NN NPS cross-refers to further information in the National Planning Policy Framework (NPPF) on Green Belt policy and paragraph 5.170 of the NN NPS states that *“the general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. Such development should not be approved except in very special circumstances. Applicants should therefore determine whether their proposal, or any part of it, is within an established Green Belt and, if so, whether their proposal may be considered inappropriate development within the meaning of Green Belt policy.”* However, paragraph 5.171 of the NN NPS acknowledges that *“linear infrastructure linking an area near a Green Belt with other locations will often have to pass through Green Belt land.”*

In view of each of the corridors containing statutory Green Belt, which cannot be avoided, the next test will be whether the Oxford to Cambridge Expressway may be considered ‘inappropriate development’ within the meaning of Green Belt policy. Paragraph 5.178 of the NN NPS states that *“when located in the Green Belt national networks infrastructure projects may comprise inappropriate development.”* With reference to the NPPF, paragraph 90 states that certain forms of development are *“not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in Green Belt”*. The list of development includes *“local transport infrastructure which can demonstrate a requirement for a Green Belt location”*.

It may be too early at this stage to comment on whether the Oxford to Cambridge Expressway could fall within the category of ‘not inappropriate’ development in relation to the above, but taking a precautionary approach it is considered unlikely; and this has been Highways England’s approach on other schemes. Therefore, it is likely that as part of the DCO(s) decision-making process, a robust and compelling case will have to be made to the Secretary of State demonstrating the very special circumstances to justify inappropriate development in the Green Belt.

Paragraph 5.170 of the NN NPS states that Metropolitan Open Land (MOL) and land designated as Local Green Space in a local or neighbourhood plan are “*subject to the same policies of protection as Green Belt, and inappropriate development should not be approved except in very special circumstances*”. Although none of the corridors contain any MOL, each of the corridors contains areas designated as Local Green Space which can potentially be avoided in the route selection process. If any designated Local Green Space is affected, the Secretary of State would need to apply a similar decision-making process to that for Green Belt (as mentioned above).

2. Consentability

2.1 Consentability definition

Consentability is part of the strategic delivery assessment referred to in Section 13 of the Corridor Assessment Report. The definition of the term 'consentability' is set out below:

- To have regard to and ensure the Project meets the legal requirements set out in the **Planning Act 2008 (PA2008)** which provides the consenting regime for granting planning and other consents for nationally significant infrastructure projects (NSIPs). Sections 104(2) and (3) of the PA2008 require applications for development consent to be decided in accordance with a relevant National Policy Statement (NPS).
- To have regard to and ensure the Project is in accordance with the **National Networks National Policy Statement (2014) (NN NPS)** as the primary basis for making decisions on development for national networks NSIPs in England and ensure the detailed policies and protections in the NN NPS are satisfied.
- To have regard to local impacts, including assessing them and providing mitigation where possible to avoid insurmountable issues being raised during examination in the local impact report:
 - Section 60(3) of the PA2008 defines a local impact report as *“a report in writing giving details of the likely impact of the proposed development on the authority’s area (or any part of that area)”*.
 - Sections 104(2b) of the PA2008 states that *“In deciding the application the Panel or Council must have regard to any local impact report (within the meaning given by section 60(3)) submitted to the Commission before the deadline specified in a notice under section 60(2)”*.
- To have regard to and ensure the application(s) meets the requirements set out in the **Infrastructure Planning (Applications: Prescribed Forms and Procedure Regulations 2009 as amended by the Infrastructure Planning (Applications: Prescribed Forms and Procedure (Amendment) Regulations 2014)** which sets out the detailed procedures that must be followed for submitting and publicising applications for NSIPs.

2.2 Consenting process

The PA2008, as amended, and associated secondary legislation, including the Localism Act 2011, sets out the regime in relation to applications and proposed applications for orders granting development consent for nationally significant infrastructure projects (NSIPs). Development of a NSIP without a Development Consent Order (DCO) is a criminal offence as stated in section 160 of the PA2008.

The different types of highway-related development that would be regarded as an NSIP were set out in the original wording of the PA2008 section 22(1) and confirms that there are three types of highway-related development:

- Construction

- Alteration
- Improvement

The Highway and Railway (NSIP) Order 2013 came into force on 25 July 2013 and Article 3 of the 2013 Order substituted replacement wording for the entirety section 22 of the PA2008. In addition, Paragraph 153 in Part 2 of Schedule 1 of the Infrastructure Act 2015 amended section 22 of the PA2008 in that any reference to 'Secretary of State' were joined by 'or a strategic highways company'. This amendment ensures that Highways England can promote NSIPs and submit applications for development consent.

The construction or alteration of a highway will only fall within the scope of the NSIP regime where the highway is wholly in England, the Secretary of State or strategic highway company is the highway authority and the area of development is greater than the relevant limit set out in section 22(4) of the PA2008 (as amended) which for:

- a motorway, is 15 hectares
- a highway, other than a motorway, where the speed limit for any class of vehicle is expected to be 50 miles per hour or greater, is 12.5 hectares, and
- any other highway, is 7.5 hectares

The phrase 'area of the development' is defined in section 22(9) of the PA2008 (as amended) as follows:

“(a) in relation to construction of a highway, [it] means the land on which the highway is to be constructed and any adjoining land expected to be used in connection with its construction.

(b) in relation to alteration of a highway, [it] means the land on which the part of the highway to be altered is situated, and any adjoining land expected to be used in connection with its alteration”.

The improvement of a highway will only fall within the scope of the NSIP regime where the highway is wholly in England, the Secretary of State or strategic highway company is the highway authority and the improvement is “*likely to have a significant effect on the environment*” as defined in section 22(5) of the PA2008 (as amended).

Based on the corridor options produced to date, it is assumed that the Oxford to Cambridge Expressway will be over the threshold for a NSIP as defined above and will require the submission of an application (or applications) for development consent to the Examining Authority.

The PA2008 process was introduced to streamline the decision-making process for NSIPs, making it fairer and faster for communities and developers alike. The requirement falls on the applicant to ensure that all stakeholders and interested parties are effectively engaged in the development of the Project. Formal consultation is the responsibility of the applicant, who must ensure that it fully accords with the requirements of the PA2008 and associated regulations.

Applications for development consent comprise a single and integrated decision-making processes which run to fixed timetables and cover all necessary consents including acquisition of land. Applications for development consent are not submitted to the local planning authority, but rather to the Examining Authority, in this case the Planning Inspectorate, who examine the application(s) on behalf of the Secretary of State. The relevant Secretary of State will make the decision on whether to grant or refuse development consent. A high-level description of the PA2008 process is described below.

1. **Pre-application:** no time limit
Applicant develops proposal and carries out pre-application consultation.
2. **Acceptance:** up to 28 days
Secretary of State has 28 days to review the application and decide whether to accept or reject it.
3. **Pre-examination:** 2 to 3 months
Examining Authority is appointed to assess issues and hold preliminary meeting. Preliminary meeting is the procedural decision on how the application is to be examined. At this stage, the public will be able to register with the Planning Inspectorate to become an interested party by making a relevant representation.
4. **Examination:** up to 6 months
Planning Inspectorate has up to 6 months to carry out the examination.
5. **Report and recommendation:** up to 3 months
The Planning Inspectorate must prepare a report on the application to the relevant Secretary of State, including a recommendation within 3 months of the close of the 6 months' examination stage.
6. **Decision:** up to 3 months
The relevant Secretary of State has 3 months to make the decision on whether to grant or refuse development consent.
7. **Post-decision:** 6 weeks
There is a 6-week period in which the decision may be legally challenged in the High Court.

As part of the application(s) for development consent, the Project will also require Environmental Impact Assessment(s) (EIA) in accordance with the Infrastructure Planning (Environment Impact Assessment) Regulations 2009, as amended, otherwise referred to as 'the EIA Regulations'. The EIA Regulations transpose European Union Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment, into the UK law.

2.3 National Networks National Policy Statement (NN NPS)

The National Policy Statement (NPS) is the primary policy reference for the Secretary of State (subject to section 104(4) to (8) of the PA2008), it is also the primary policy framework which is taken into consideration by the Planning Inspectorate when

determining an application for development consent on behalf of the Secretary of State.

In the case of the Oxford to Cambridge Expressway, the relevant NPS is the NN NPS (2014) which was designated, following a vote in Parliament, and adopted as national policy in March 2015. The Oxford to Cambridge Expressway application(s) for development consent will be structured around the NN NPS and a NN NPS Accordance Table (or Tables) will be prepared to ensure due regard is given to the NN NPS as the Project evolves.

The NN NPS recognises that there is a critical need to improve the national networks to address road congestion and crowding on the railways to provide safe, expeditious and resilient networks that better support social and economic activity; and to provide a transport network that is capable of stimulating and supporting economic growth. However, the Government's policy on development of the strategic road network (SRN) is not that of predicting traffic growth and then providing for that growth regardless. Individual schemes will be brought forward to tackle specific issues, including those of safety, rather than to meet unconstrained traffic growth, meaning 'predict and provide'.

Paragraph 2.10 of the NN NPS states *"that the Government has concluded that at a strategic level there is a compelling need for development of the national networks – both as individual networks and as an integrated system"*. The guidance is therefore that the Examining Authority, in this case the Planning Inspectorate, and the Secretary of State should start their assessment of applications for infrastructure covered by the NN NPS on that basis.

The Government's wider policy is to bring forward improvements and enhancements to the existing SRN, and this will include improvements to trunk roads, in particular dualling of single carriageway strategic trunk roads and additional lanes on existing dual carriageways to increase capacity and to improve performance and resilience.

Applicants should also provide evidence that they have considered reasonable opportunities to deliver environmental and social benefits as part of schemes.

Subject to the detailed policies and protections in the NN NPS, and the legal constraints set out in the PA2008, there is a presumption in favour of granting development consent(s) for national networks NSIPs that fall within the need for infrastructure established in the NN NPS.

Detailed work will be needed to support an application for development consent(s) in a wide range of areas. These include, but are not restricted to:

- an outline of the main alternatives studied by the applicant and an indication of the main reasons for the applicant's choice, taking into account the environmental effects
- an options appraisal
- consideration of design as an integral consideration from the outset of a proposal

- objective assessment of the impact of the proposed development on safety
- air quality
- biodiversity and ecological mitigation
- flood risk
- the historic environment
- landscape and visual impacts
- noise and vibration
- water quality and resources
- climate change resilience

2.4 Other national policy

The Planning Inspectorate can also have regard to any other matter that they consider to be both important and relevant for the examination of an application for development consent(s). Other national policies may be considered as falling into this category:

- National Infrastructure Delivery Plan 2016-2021 (2016)
- National Infrastructure Plan (2014) and
- National Planning Policy Framework (2012) and other national strategies:
 - Department for Transport Single Departmental Plan (2017)
 - Road Traffic Forecasts (2015)
 - Investing in Britain's Future (2013)
 - Action for Roads: A network for the 21st Century (2013) and
 - Department for Transport Business Plan 2012-2015 (2012)

2.5 Local policy

Paragraph 3.4 of the NN NPS identifies that some developments will have adverse environmental and social impacts. The NN NPS goes on to state that “...*whilst applicants should deliver developments in accordance with Government policy and in an environmentally sensitive way, including considering opportunities to deliver environmental benefits, some adverse local effects of development may remain*”.

In addition, paragraph 5.167 of the NN NPS states that, “*During any pre-application discussions with the applicant, the local planning authority should identify any concerns it has about the impacts of the application on land-use, having regard to the development plan and relevant applications....*”

As part of the examination process, the relevant local authorities will be invited to submit a local impact report (LIR) giving detail of the likely impact of the proposed development on the authority's area. In coming to a decision, the Planning Inspectorate must have regard to any LIRs that are submitted by the deadline.

The corridor options are located within the following county and district councils:

- Bedford Borough Council (Unitary Authority)
- Buckinghamshire County Council
 - Aylesbury Vale District Council
 - Milton Keynes Council

- Cambridgeshire County Council
 - Huntingdonshire District Council
 - South Cambridgeshire District Council
- Central Bedfordshire Council (Unitary Authority)
- Hertfordshire County Council
 - Dacorum Borough Council
- Oxfordshire County Council
 - Cherwell District Council
 - Oxford City Council
 - South Oxfordshire District Council
 - Vale of White Horse District Council
 - West Oxfordshire District Council
- West Berkshire Council (Unitary Authority)

The relevant adopted and emerging local plans, which set out local planning policy for each local planning authority together with supplementary planning documents, will be discussed in detail in the next stages of the Project. It is not possible at this early stage to meaningfully assess the local planning policy associated with the Project due to the given scale of the corridor options. It is considered that at Stage 1B a local planning policy review would help to inform the decision-making on the recommended route option(s). For clarity, whilst local plans do not provide the basis for decision-making for NSIPs, they still have relevance to the process particularly when local authorities are required to submit LIRs to the Planning Inspectorate at examination stage.

3. National Networks National Policy Statement (NN NPS) Table

The key NN NPS paragraphs in which the Secretary of State identifies the reasons why consent should not be granted and the various tests that need to be met to gain consent are set out in Table 1.1.

Table 1.1: NN NPS key paragraphs highlighting why consent should not be granted

Topic	NN NPS Paragraph	Wording
Safety	4.66	<p>The Secretary of State should not grant development consent unless satisfied that all reasonable steps have been taken and will be taken to:</p> <ul style="list-style-type: none"> • minimise the risk of road casualties arising from the scheme; and • contribute to an overall improvement in the safety of the Strategic Road Network.
Air quality	5.13	<p>The Secretary of State should refuse consent where, after taking into account mitigation, the air quality impacts of the scheme will:</p> <ul style="list-style-type: none"> • result in a zone/agglomeration which is currently reported as being compliant with the Air Quality Directive becoming non-compliant; or • affect the ability of a non-compliant area to achieve compliance within the most recent timescales reported to the European Commission at the time of the decision.
Internationally designated sites and Sites of Special Scientific Interest (includes National Nature Reserves)	5.27 to 5.29	<p>Where a proposed development on land within or outside [an internationally designated site and/or] a SSSI is likely to have an adverse effect on an [internationally designated site and/or a] SSSI (either individually or in combination with other developments), development consent should not normally be granted. Where an adverse effect on the site's notified special interest features is likely, an exception should be made only where the benefits of the development at this site clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest, and any broader impacts on the national network of SSSIs....</p>

		Please be aware that paragraph 5.29 refers specifically to SSSIs, but paragraph 5.27 demonstrated that the Government places equal if not more weight on the protection of internationally designated sites. This therefore extends paragraph 5.29 to apply also to listed and candidate proposed Special Areas of Conservation, Special Protection Areas, Sites of Community Importance and Ramsar sites.
Irreplaceable habitats including ancient woodland and veteran trees	5.32	The Secretary of State should not grant development consent for any development that would result in the loss or deterioration of irreplaceable habitats including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the national need for and benefits of the development, in that location, clearly outweigh the loss...
Protection of other habitats and species	5.27 5.35 4.22 to 4.25	...The Secretary of State should refuse consent where harm to the habitats or species and their habitats would result, unless the benefits of the development (including need) clearly outweigh that harm.
Civil and military aviation and defence interests	5.62	Where, after reasonable mitigation, operational changes and planning obligations and requirements have been proposed, development consent should not be granted if the Secretary of State considers that: <ul style="list-style-type: none"> • a development would prevent a licensed aerodrome from maintaining its licence; • the benefits of the proposed development are outweighed by the harm to aerodromes serving business, training or emergency service needs; or • the development would significantly impede or compromise the safe and effective use of defence assets or significantly limit military training.
Coastal change	5.75	When assessing applications in a CCMA, [Coastal Change Management Area], the Secretary of State should not grant development consent unless it is demonstrated that the development: <ul style="list-style-type: none"> • will be safe over its planned lifetime and will not have an unacceptable impact on coastal change; • will not compromise the character of the coast covered by designations; • provides wider sustainability benefits; and

		<ul style="list-style-type: none"> • does not hinder the creation and maintenance of a continuous signed and managed route around the coast.
Flood risk	5.99 & 5.108	<p>When determining an application, the Secretary of State should be satisfied that flood risk will not be increased elsewhere and only consider development appropriate in areas at risk of flooding where (informed by a flood risk assessment, following the Sequential Test and, if required, the Exception Test), it can be demonstrated that:</p> <ul style="list-style-type: none"> • within the site, the most vulnerable development is located in areas of lowest flood risk unless there are overriding reasons to prefer a different location; and • development is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed, including by emergency planning; and priority is given to the use of sustainable drainage systems. <p>Both elements of the test will have to be passed for development to be consented. For the Exception Test to be passed:</p> <ul style="list-style-type: none"> • it must be demonstrated that the project provides wider sustainability benefits to the community that outweigh flood risk; and • a FRA must demonstrate that the project will be safe for its lifetime, without increasing flood risk elsewhere and, where possible, will reduce flood risk overall.
The historic environment (designated heritage assets)	5.133	<p>Where the proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, the Secretary of State should refuse consent unless it can be demonstrated that the substantial harm or loss of significance is necessary in order to deliver substantial public benefits that outweigh that loss or harm, or alternatively that all of the following apply:</p> <ul style="list-style-type: none"> • the nature of the heritage asset prevents all reasonable uses of the site; and • no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and • conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and • the harm or loss is outweighed by the benefit of bringing the site back into use.

<p>Nationally designated areas: National Parks, the Broads & Areas of Outstanding Natural Beauty</p>	<p>5.151 & 5.152</p>	<p>The Secretary of State should refuse development consent in these areas except in exceptional circumstances and where it can be demonstrated that it is in the public interest. Consideration of such applications should include an assessment of:</p> <ul style="list-style-type: none"> • the need for the development, including in terms of any national considerations, and the impact of consenting, or not consenting it, upon the local economy; • the cost of, and scope for, developing elsewhere, outside the designated area, or meeting the need for it in some other way; and • any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated. <p>There is a strong presumption against any significant road widening or the building of new roads and strategic rail freight interchanges in a National Park, the Broads and Areas of Outstanding Natural Beauty, unless it can be shown there are compelling reasons for the new or enhanced capacity and with any benefits outweighing the costs very significantly. Planning of the Strategic Road Network should encourage routes that avoid National Parks, the Broads and Areas of Outstanding Natural Beauty.</p>
<p>Green Belt</p>	<p>5.170 & 5.178</p>	<p>...Metropolitan Open Land, and land designated as Local Green Space in a local or neighbourhood plan, are subject to the same policies of protection as Green Belt, and inappropriate development should not be approved except in very special circumstances.</p> <p>When located in the Green Belt national networks infrastructure projects may comprise inappropriate development. Inappropriate development is by definition harmful to the Green Belt and there is a presumption against it except in very special circumstances. The Secretary of State will need to assess whether there are very special circumstances to justify inappropriate development. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt, when considering any application for such development.</p>

Open space / sports and recreational buildings and land	5.174	The Secretary of State should not grant consent for development on existing open space, sports and recreational buildings and land, including playing fields, unless an assessment has been undertaken either by the local authority or independently, which has shown the open space or the buildings and land to be surplus to requirements, or the Secretary of State determines that the benefits of the project (including need) outweigh the potential loss of such facilities, taking into account any positive proposals made by the applicant to provide new, improved or compensatory land or facilities.
Noise and vibration	5.195	<p>The Secretary of State should not grant development consent unless satisfied that the proposals will meet, the following aims, within the context of Government policy on sustainable development:</p> <ul style="list-style-type: none"> • avoid significant adverse impacts on health and quality of life from noise as a result of the new development; • mitigate and minimise other adverse impacts on health and quality of life from noise from the new development; and • contribute to improvements to health and quality of life through the effective management and control of noise, where possible.
Water quality and resources	5.227	...If the Environment Agency continues to have concerns and objects to the grant of development consent on the grounds of impacts on water quality/resources, the Secretary of State can grant consent, but will need to be satisfied before deciding whether or not to do so that all reasonable steps have been taken by the applicant and the Environment Agency to try to resolve the concerns, and that the Environment Agency is satisfied with the outcome.
Minerals Safeguarding Areas	5.169 & 5.182	<p>Applicants should safeguard any mineral resources on the proposed site as far as possible.</p> <p>Where a proposed development has an impact on a Mineral Safeguarding Area (MSA), the Secretary of State should ensure that the applicant has put forward appropriate mitigation measures to safeguard mineral resources.</p>

Glossary

Term	Description
Allotments	Areas of land divided into small plots not more than 1000 square metres and leased for the purpose of cultivation. Can be owned privately or by a local authority.
Application	This refers to an application for a Development Consent Order. An application consists of a series of documents and plans which are submitted to the Planning Inspectorate and published on its website.
Common land	Area of land over which certain people have traditional rights, such as access on foot, to graze livestock or collect firewood. It is owned for example by a local council, privately or by the National Trust. It is usually referred to as a common.
Compulsory acquisition	Compulsory acquisition is the power of government to acquire private rights in land without the willing consent of its owner or occupant in order to benefit society. This power is often necessary for social and economic development and for protection of the natural environment. A Development Consent Order (DCO) may include an authority to acquire land by compulsory acquisition.
Consent	A statutory permission given to an applicant by a statutory authority, such as the local planning authority or the Secretary of State, that allows a development to be carried out within a specific area of land.
Consenting process	The regulated process of obtaining permission from a statutory authority, against a set of principles and legislation, to carry out the works of a particular development within a specific area of land.
Crown land	Land in which there is a Crown interest. 'Crown interest' is defined as an interest belonging to Her Majesty in right of the Crown or in right of Her private estates, an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department, and such other interest as the Secretary of State specifies by order.
Designation/ Designated	Area of land which has been given a special status due to its particular characteristic or purpose. Normally there are restrictions on activities and developments that might affect a designated or protected area. Local authorities and other statutory authorities such as Environment Agency can designate an area of land providing that it is a matter of public interest.
Development	Development is defined under the Town and Country Planning Act 1990 as <i>"the carrying out of building, engineering, mining or other operation in, on, over or under land, or the making of any material change in the use of any building or other land."</i> For the purposes of nationally significant infrastructure projects, a

	Development Consent Order is required before the development can take place.
Development consent	Consent under the Planning Act 2008. It is required for development that is (or forms part of) a nationally significant infrastructure project.
Development Consent Order (DCO)	A statutory order which provides development consent for a project and means that a range of other consents, such as planning permission and listed building consent, will not be required. A Development Consent Order (DCO) can also include provisions authorising the compulsory acquisition of land or of interests in or rights over land which is the subject of an application. It is granted by the relevant Secretary of State under the Planning Act 2008, following examination by the Planning Inspectorate.
Environmental Impact Assessment (EIA)	A procedure to be followed for NSIPs to ensure that decisions by the Secretary of State are made in full knowledge of any likely significant effects on the environment. The EIA also seeks to ensure that the public are given early and effective opportunities to participate in the decision-making process.
Examination stage	The formal, legal process governed by the Planning Act 2008 and related legislation. The examination stage is operated and led by the Examining Authority (Planning Inspectorate) on behalf of the Secretary of State and can last up to 6 months.
Green Belt	<p>A designation for land around certain cities and large built-up areas, which aims to keep this land permanently open or largely undeveloped. The purpose of the Green Belt is to:</p> <ul style="list-style-type: none"> • check the unrestricted sprawl of large built-up areas • prevent neighbouring towns from merging • safeguard the countryside from encroachment • preserve the setting and special character of historic towns • assist urban regeneration by encouraging the recycling of derelict and other urban land <p>Green Belts are defined in the development plan of a local planning authority.</p>
Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009	One of many pieces of secondary legislation governing the Planning Act 2008 process. It sets out the procedure which applicants for development consent for nationally significant infrastructure projects will be required to follow before and after submitting an application to the Planning Inspectorate under the Planning Act 2008, and the content of such applications. It has been amended by the Infrastructure Planning (Applications: Prescribed Forms and Procedure) (Amendment) Regulations 2014.
Legal tests	Legal tests are various kinds of evaluation methods used to resolve legal matters. In the context of hearings or other kinds

	of legal proceedings, the decision of certain questions of law may depend on the application of one or more legal tests.
Local Green Space	<p>Protective designation of green areas of particular importance to local communities. Local Green Space should only be designated where:</p> <ul style="list-style-type: none"> • the green space is reasonably close to the community it serves • the green area is clearly special to a local community and holds a particular local significance, for example because of its beauty, historic significance, recreational value (including as a playing field), tranquillity or richness of its wildlife • the green area concerned is local in character and is not an extensive tract of land. <p>Land designated as Local Green Space in a local or neighbourhood plan has the same level of protection as Green Belt.</p>
Local impact report	A report produced by a local authority which gives details of the likely impact of the proposed development on the local authority's area (or any part of that area). As part of the examination process, the Planning Inspectorate will invite relevant local authorities to submit local impact reports by a given deadline.
Local plan	A statutory development plan prepared by the local planning authority in consultation with the local community. It sets out the vision and framework for the future development of the local area with detailed policies to address needs and opportunities in relation to housing, the economy, community facilities and infrastructure, as well as environmental protection.
Metropolitan Green Belt	It is the statutory Green Belt around London. It is also known as London Green Belt.
Metropolitan Open Land	Strategic open land within London's urban area designated in The London Plan 2016. Metropolitan Open Land has the same level of protection as the Green Belt.
National Policy Statement (NPS)	A national policy document issued by the government which sets out the government's objectives and the need for the development of nationally significant infrastructure projects in the UK. There are currently 11 designated National Policy Statements for different infrastructure sectors, including transport, water, waste and energy. The NPS is the basis for the examination of a DCO application by the Examining Authority and decisions by the Secretary of State.
National Networks National Policy Statement 2014 (NN NPS)	It is the NPS for promoters of NSIPs on road and rail networks in England. It is also known as National Policy Statement for National Networks. It has been adopted as national policy by the UK Parliament in March 2015.

National Planning Policy Framework (NPPF)	The NPPF sets out the Government's planning policies for England and how these are expected to be applied. It is relevant to applications for development consent to the extent that the NN NPS cross-refers to some policies set out in the NPPF.
Nationally Significant Infrastructure Project (NSIP)	Nationally significant infrastructure projects are large scale developments (relating to energy, transport, water, or waste) which require a type of consent known as 'development consent' under the Planning Act 2008.
National Trust	A conservation charity founded in 1895 that seeks to preserve and protect historic places and space, including nature reserves and art collections, within England, Wales and Northern Ireland.
Neighbourhood plan	A plan prepared by a parish council or neighbourhood forum for a particular neighbourhood area (made under the Planning and Compulsory Purchase Act 2004).
Open space	Specific areas of open space which come within the definition of special category land and are typically owned and/or managed by local authorities. They include open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity.
Planning Act 2008 (as amended)	Act of Parliament which sets out the statutory requirements and planning application process for nationally significant infrastructure projects, such as energy, water, transport and waste. Applications for Development Consent Order are submitted following the processes set out in the Planning Act 2008. The Act was amended by the Growth and Infrastructure Act 2013.
Planning Inspectorate	The government agency responsible for operating the planning process for nationally significant infrastructure projects and for examining applications for development consent under the Planning Act 2008, on behalf of the Secretary of State.
Planning permission	Formal approval sought from a local planning authority allowing a proposed development to proceed. Permission may be sought in principle through a planning application submitted to the local planning authority.
Presumption	An assumption that a particular fact is true until there is a greater weight of evidence which disproves or outweighs the assumption. Each presumption is based upon a particular set of apparent facts paired with established laws, logic, reasoning or individual rights.
Secretary of State	Cabinet minister in charge of a government department. The Secretary of State for Transport grants Development Consent Orders for national road networks in England.
Special category land	Land identified as forming part of a common, open space, National Trust land, or fuel or field garden allotment. These special categories of land are subject to additional provisions in the Planning Act 2008 if it is proposed that they should be

	compulsorily acquired. This includes the possibility of any compulsory acquisition provision in the DCO being subject to special parliamentary procedure.
Statutory	Required by law (statute), usually through an Act of Parliament.
Supplementary planning documents	Documents which add further detail to the policies in the Local Plan. They can be used to provide further guidance for development on specific sites, or on particular issues, such as design. Supplementary planning documents are capable of being a relevant ('material') consideration in planning decisions but are not part of the development plan.
Town or village green	Area of land within a town or village used for sports and recreation, for example playing football or dog-walking. Some also have 'rights of common' over them like livestock-grazing, so could be classed as special category land (see above). The right to access on foot does not apply to town or village green. Many town or village greens are owned and maintained by local parish or community councils. Some are privately owned. The term 'common' also refers to any town or village green.
Urban sprawl	The uncontrolled or unplanned extension of urban areas into the countryside.