

IN THE MATTER OF:
**DEVELOPMENT CONSENT ORDER APPLICATION BY NATIONAL
GRID ELECTRICITY TRANSMISSION (“NGET”)**
FOR THE NORWICH TO TILBURY PROJECT (“THE PROJECT”)

**SUBMISSIONS ON BEHALF OF PYLONS EAST ANGLIA LIMITED
 (“PEAL”)**

I. INTRODUCTION

1. These submissions address the Examining Authority’s Question GEN 1.6.

This states:

“Critical national priority

The planning statement [[APP-085](#)] references the need for the proposed development in the context of the urgent need for renewable energy generation within the UK, and in doing so, it refers to the presumption specifically in relation to critical national priority (CNP) infrastructure. Paragraph 4.2.7 of NPS EN-1 (2023) makes it clear that the CNP policy does not create an additional or cumulative need case or weighting for each type of energy infrastructure. The policy applies following the normal consideration of the need case, the impacts of the project, and the application of the mitigation hierarchy. It will be given consideration by the ExA when making its recommendation to the Secretary of State, who will apply the CNP policy in its decision making specifically in reference to any residual impacts that have been identified.

NPS EN-1 paragraph 4.1.7 notes that for projects which qualify as CNP Infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases. Paragraphs 7.2.7 to 7.2.28 of the planning statement [[APP-085](#)] sets out a summary of the potential residual impacts (non Habitats Regulations Assessment (HRA) impacts) which may remain after the mitigation hierarchy has been applied. These relate to the relevant exceptions listed in the CNP policy at NPS EN-1 paragraph 4.2.15: human health and public safety, defence, irreplaceable habitats, the achievement of Net Zero, and flood risk.

Paragraph 4.2.17 of NPS EN-1 sets out that the Secretary of State will also take as a starting point that CNP infrastructure will meet a

number of policy tests including in relation to green belt, sites of special scientific interest (SSSI), nationally designated landscapes and heritage assets.

IPs are invited to review the applicant's consideration of CNP in the planning statement [[APP-085](#)] (in particular paragraphs 7.2.52 to 7.2.257) and the policy compliance tracker [[REP1-133](#)] (tables 1.4 and 1.5), and state if they agree with its approach, including in respect of the updated NPS published in December 2025 (which the ExA considers to be an important and relevant consideration in decision making)

In particular the ExA requests all local authorities and the listed statutory consultees to provide comment on the policy tests on matters of human health and public safety, defence, irreplaceable habitats, flood risk, green belt, sites of special scientific interest, nationally designated landscapes and heritage assets, as well as the HRA."

2. A key consideration in this context is the proper characterisation of what the presumed need relates to. Does it relate to the principle of new high voltage grid infrastructure to transmit electricity from Norwich to Tilbury, or does it relate to the *particular means of doing so* proposed by the Project?
3. The sections of the Planning Statement and Policy Compliance Tracker referenced in Question GEN 1.6 elide these two separate concepts (as does the opinion of Russell Harris KC dated 8th August 2025¹). For the reasons set out below, this is a fundamental error of approach.
4. This issue overlaps with the key questions posed on behalf of PEAL at Issue Specific Hearing 1 ("ISH1") seeking clarification of the following two questions, the answers to which are unclear in the application documentation:

¹ [EN020027-000158-5.1 Consultation Report - Appendix N Legal Opinions.pdf](#). Note: PEAL refrained from providing a detailed response to Mr Harris KC's Opinion at this stage, since it is principally directed at the legal adequacy of pre-application consultation, which is not a matter for the Examination but will be a matter for a future judicial review claim in the event that the application is granted by the Secretary of State following the Examination. For the avoidance of doubt, Mr Harris' analysis is strongly disputed.

- a. What are the Project Objectives (against which the Environmental Statement alternatives are to be tested)?²
 - b. Whether NGET's position is that none of the alternatives, including HVDC underground cables and/or use of existing infrastructure, can meet the project objectives (and if so, specifically why); or the alternatives could in principle meet the project objectives, but at an unacceptably higher financial cost compared to the Project?
5. NGET said at ISH1 that they would respond in writing to these questions at Deadline 1. Unfortunately, its *Deadline 1 Comments on Relevant Representations*³ was wholly silent on the first of these questions; and did not directly and clearly answer the second. The Examining Authority has itself indicated that it considered this document to be unsatisfactorily unclear and asked for a revised version by Deadline 2.⁴
 6. That revised version has now been published,⁵ and inexplicably it still does not even attempt to address the first question and is opaque in relation to the second.
 7. This sustained obfuscation on such key questions should be deprecated by the Examining Authority and, if it is continued, adverse inferences should be made.

II. POLICY FRAMEWORK

8. Section 104 of the Planning Act 2008 is entitled "*Decisions in cases where national policy statement has effect*". Subsections (3) to (9) provide:

² See ISH1 transcript, 11:49:14 – 13:01:09, pp.5-6.

³ [EN020027-001967-8.4.1 Applicant's Comments on Relevant Representations.pdf](#)

⁴ [XE09 – Rule 17 ExA request for further information letter](#)

⁵ [EN020027-002125-8.4.1 Applicant's Comments on Relevant Representations Revision B Clean Version.pdf](#)

- “(3) The Secretary of State must decide the application in accordance with any relevant national policy statement, except to the extent that one or more of subsections (4) to (8) applies.
- (4) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the United Kingdom being in breach of any of its international obligations.
- (5) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would lead to the Secretary of State being in breach of any duty imposed on the Secretary of State by or under any enactment.
- (6) This subsection applies if the Secretary of State is satisfied that deciding the application in accordance with any relevant national policy statement would be unlawful by virtue of any enactment.
- (7) This subsection applies if the Secretary of State is satisfied that the adverse impact of the proposed development would outweigh its benefits.
- (8) This subsection applies if the Secretary of State is satisfied that any condition prescribed for deciding an application otherwise than in accordance with a national policy statement is met.
- (9) For the avoidance of doubt, the fact that any relevant national policy statement identifies a location as suitable (or potentially suitable) for a particular description of development does not prevent one or more of subsections (4) to (8) from applying.”

9. The application is being examined by reference to the November 2023 version of National Policy Statement EN-1 (“**NPS EN-1**”). Paragraph 4.1.7 of this states:

“Where this NPS or the relevant technology specific NPSs require an applicant to mitigate a particular impact as far as possible, but the Secretary of State considers that there would still be residual adverse effects after the implementation of such mitigation measures, the Secretary of State should weigh those residual effects against the benefits of the proposed development. For projects which qualify as CNP Infrastructure, it is likely that the need case will outweigh the residual effects in all but the most exceptional cases. This presumption, however, does not apply to residual impacts which present an unacceptable risk to, or interference with, human health and public safety, defence, irreplaceable habitats or unacceptable risk to the achievement of net zero. Further, the same exception applies to

this presumption for residual impacts which present an unacceptable risk to, or unacceptable interference offshore to navigation, or onshore to flood and coastal erosion risk.”

10. This is elaborated by paragraphs 4.2.2-4.2.9, which states:

“4.2.2 Ensuring the UK is more energy independent, resilient and secure requires the smooth transition to abundant, low-carbon energy. The UK’s strategy to increase supply of low carbon energy is dependent on deployment of renewable and nuclear power generation, alongside hydrogen and CCUS. Our energy security and net zero ambitions will only be delivered if we can enable the development of new low carbon sources of energy at speed and scale.

4.2.3 With smart and strategic planning, the UK can maintain high environmental standards and minimise impacts while increasing the levels of deployment at the scale and pace needed to meet our energy security and net zero ambitions.

4.2.4 Government has therefore concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure.

4.2.5 This does not extend the definition of what counts as nationally significant infrastructure: the scope remains as set out in the Planning Act 2008. Low carbon infrastructure for the purposes of this policy means:

- for electricity generation, all onshore and offshore generation that does not involve fossil fuel combustion (that is, renewable generation, including anaerobic digestion and other plants that convert residual waste into energy, including combustion, provided they meet existing definitions of low carbon; and nuclear generation), as well as natural gas fired generation which is carbon capture ready
- for electricity grid infrastructure, all power lines in scope of EN-5 including network reinforcement and upgrade works, and associated infrastructure such as substations. This is not limited to those associated specifically with a particular generation technology, as all new grid projects will contribute towards greater efficiency in constructing, operating and connecting low carbon infrastructure to the National Electricity Transmission System
- for other energy infrastructure, fuels, pipelines and storage infrastructure, which fits within the normal definition of “low carbon”, such as hydrogen distribution, and carbon dioxide distribution

- for energy infrastructure which is directed into the NSIP regime under section 35 of the Planning Act 2008, and fit within the normal definition of “low carbon”, such as interconnectors, Multi-Purpose Interconnectors, or ‘bootstraps’ to support the onshore network which are routed offshore
- Lifetime extensions of nationally significant low carbon infrastructure, and repowering of projects

4.2.6 The overarching need case for each type of energy infrastructure and the substantial weight which should be given to this need in assessing applications, as set out in paragraphs 3.2.6 to 3.2.8 of EN-1, is the starting point for all assessments of energy infrastructure applications.

4.2.7 The CNP policy does not create an additional or cumulative need case or weighting to that which is already outlined for each type of energy infrastructure. The policy applies following the normal consideration of the need case, the impacts of the project, and the application of the mitigation hierarchy. As such, it is relevant during Secretary of State decision making and specifically in reference to any residual impacts that have been identified. It should therefore also be given consideration by the Examining Authority when it is making its recommendation to the Secretary of State.

4.2.8 During decision making, the CNP policy will influence how non-HRA and non MCZ residual impacts are considered in the planning balance. The policy will therefore also influence how the Secretary of State considers whether tests requiring clear outweighing of harm, exceptionality, or very special circumstances have been met by a CNP Infrastructure application. Further detail is provided in paragraphs 4.2.15 to 4.2.17, and Figure 2.

4.2.9 During decision making, the CNP policy also explains the Secretary of State’s approach to HRA derogations and MCZ assessments. Specifically, the policy explains how the alternative solutions and IROPI tests are considered by the Secretary of State. Further detail is provided in paragraphs 4.2.18 to 4.2.22, and Figure 3.”

11. The policy on the application of IROPI to CNP projects in the context of both terrestrial and marine habitats is set out at paragraph 4.2.21, which states:

“For both derogations, the Secretary of State will consider the particular circumstances of any plan or project, but starting from the position that energy security and decarbonising the power sector to combat climate change:

- requires a significant number of deliverable locations for CNP Infrastructure and for each location to maximise its capacity. This NPS imposes no limit on the number of CNP infrastructure projects that may be consented. Therefore, the fact that there are other potential plans or projects deliverable in different locations to meet the need for CNP Infrastructure is unlikely to be treated as an alternative solution. Further, the existence of another way of developing the proposed plan or project which results in a significantly lower generation capacity is unlikely to meet the objectives and therefore be treated as an alternative solution; and
- are capable of amounting to imperative reasons of overriding public interest (IROPI) for HRAs, and, for MCZ assessments, the benefit to the public is capable of outweighing the risk of environmental damage, for CNP Infrastructure.”

12. NPS EN-1 was updated in December 2025. By virtue of the transitional provisions in Section 1.6, it does not “*have effect*” (i.e. for the purposes of s.104 of the 2008 Act) in relation to the project although the amendments within it are “*potentially capable*” of being “*important and relevant considerations*” Question GEN 1.6 states that the Examining Authority considers it is “*an important and relevant consideration in decision making*”.
13. Considerable caution must be applied in this respect. Whilst the December 2025 version may be of some general relevance, it cannot be a basis for allowing an otherwise unacceptable application, or indeed dismissing an otherwise acceptable application – since that would be to give it “*effect*” for s.104 purposes, contrary to the transitional provisions. In short, therefore, whilst it may be a *relevant* consideration, it legally cannot be a *determinative* consideration. The focus of the examination, including in relation to CNP policy, must be on the November 2023 version of NPS EN-1, and hence so too is the focus of these submissions. References below to the NPS are to that version.

III. CONCLUSIONS

14. Having regard to the wording and context of the passage of NPS EN-1 which introduce and explain the CNP presumption, the better interpretation is that the presumed need is for the *principle of the infrastructure in question* not the *particular means of delivering it*. Thus in the present case, the need is presumed for “*electricity grid infrastructure*” (NPS EN-1, paragraph 4.2.5, 2nd bullet) – and thus the principle of new high voltage grid infrastructure to transmit electricity from Norwich to Tilbury.
15. There is nothing in the wording of the policy that supports the view that the presumption extends beyond this, and also applies to the *particular means of delivery* proposed by the Project. Reading the presumption in this more expansive way would sit easily with its purpose as described in paragraph 4.2.3 of NPS EN-1, being “*to maintain high environmental standards and minimise impacts while increasing the levels of deployment at the scale and pace needed to meet our energy security and net zero ambitions*” (emphasis added). Applying the presumption to the principle of new high voltage grid infrastructure to transmit electricity from Norwich to Tilbury, but not to the particular means of delivery proposed by the project, would strike the balance sought for by paragraph 4.2.3; applying the presumption to both would not.
16. The provisions of the first bullet of paragraph 4.2.21, in relation to the application of the IROPI test in CNP cases affecting terrestrial and/or marine habitats designations, are also illuminating in this context.
17. The first part of this bullet notes the requirement for “*a significant number of deliverable locations for CNP Infrastructure and for each location to maximise its capacity. This NPS imposes no limit on the number of CNP infrastructure projects that may be consented. Therefore, the fact that there are other potential plans or projects deliverable in different locations to meet the need for CNP Infrastructure is unlikely to be treated as an alternative solution.*” This plainly

would support the application of the presumption to a renewable energy *generation* scheme on the basis that many such schemes are necessary. But in the present case, there is no suggestion that there is a need for multiple instances of new high voltage grid infrastructure to transmit electricity from Norwich to Tilbury. Only one such is needed. The first part of the bullet is therefore neutral on the issue of interpretation in this case.

18. The second part states “*the existence of another way of developing the proposed plan or project which results in a significantly lower generation capacity is unlikely to meet the objectives and therefore be treated as an alternative solution*”. If the CNP presumption applies not just to the principle of the infrastructure in question but also the means of delivery, these words would not be necessary – they would be entirely otiose. That would be a surprising outcome. If, however, the NPS is to be interpreted in such a way that these words are to have meaning, then what they indicate is that where an alternative means of delivering the principle in question (in the example given, a need for renewable energy generation; in the present case the need for new high voltage grid infrastructure to transmit electricity from Norwich to Tilbury) is not significantly inferior in operational terms, it *can* be considered as an alternative solution – the presumption does not require otherwise, because the presumption applies to the principle and not the means of delivery.
19. There is nothing in paragraphs 3.2.6-3.2.8 of NPS EN-1, to which paragraph 4.2.6 cross-refers, which is inconsistent with the above analysis.
20. For these reasons, in answer to Question GEN 1.6, the sections of the Planning Statement and Policy Compliance Tracker referenced in that question do **not** apply the correct approach to the CNP presumption in NPS EN-1. The presumed need relates to the principle of new high voltage grid infrastructure to transmit electricity from Norwich to Tilbury, and not to the *particular means of doing so* proposed by the Project. To proceed

otherwise would be wrong in law.

21. Further, and in any event, even if the CNP presumption *were* to be applied to the particular means of delivery proposed by the Project, the relative performance of the Project and alternatives (including HVDC underground cabling and/or reuse of existing infrastructure) would be obviously relevant to the determination of whether of grounds under s.104(3)-(9) for proceeding otherwise than in accordance with NPS EN-1. The Supreme Court has only recently reiterated that national planning policy cannot change the law: see *CG Fry & Son Ltd. v. Secretary of State for Housing, Communities and Local Government* [2025] P.T.S.R. 1823 per Lord Sales JPS C at paragraphs 60-72. The CNP presumption in NPS EN-1 cannot, therefore, constrain the scope of material considerations under s.104(3)-(9).

22. The final part of Question GEN 1.6 states:

“In particular the ExA requests all local authorities and the listed statutory consultees to provide comment on the policy tests on matters of human health and public safety, defence, irreplaceable habitats, flood risk, green belt, sites of special scientific interest, nationally designated landscapes and heritage assets, as well as the HRA.”

23. If the CNP presumption were to apply not merely to the principle of new high voltage grid infrastructure to transmit electricity from Norwich to Tilbury, and but also to the *particular means of doing so* proposed by the Project (which, for the above reasons, it does not), then these considerations would be the focus of the consideration *for the purposes of testing NPS EN-1 compliance*; but the scope of material considerations under s.104(3)-(9) is significantly broader.

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10th April 2026