



# Navigating the participatory processes of renewable energy infrastructure regulation: A ‘local participant perspective’ on the NSIPs regime in England and Wales

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## ABSTRACT

This paper presents the results of research into local people's involvement in energy infrastructure planning, in the context of the regulatory processes for ‘Nationally Significant Infrastructure Projects’ (NSIPs) and focusing specifically on major renewable energy infrastructure (REI) in England and Wales. It builds on recent work around public views of REI, by looking at the new opportunities for public involvement established through the participation mechanisms of the NSIPs regime. A survey explored opportunities for influence, perceptions of influence and confidence in the results of decisions; local people's responses signaled areas of concern. Reflections on these perspectives in light of interview data from community facilitators and the survey responses of other actors suggest that the new duties within the processes shape the participatory experiences. Conclusions consider the implications for practice.

## 1. Introduction

Local people's views of renewable energy infrastructure (REI) planning are, broadly speaking, characterized as skeptical in the literature, and commonly presented as a socio-institutional barrier to realizing renewable energy (Eltham et al., 2008; Wolsink, 2000). Some public concerns about energy infrastructure planning processes center on not being able to influence decisions on whether consent should be granted, and others have been associated with a variety of procedural aspects. Investigations into renewable energy infrastructure planning often focus on the use of decide-announce-defend style processes and how local opinions are not heard (Breukers and Wolsink, 2007; Devine-Wright, 2005; Haggett, 2008; Wolsink, 2007a, 2000). In the UK, a new system of regulating major renewable energy infrastructure (REI), involving significant changes to the opportunities for public participation in decision-making on such development, was introduced by the Planning Act 2008. As described in more detail in the following section, this new system for consenting ‘Nationally Significant Infrastructure Projects’ (NSIPs) provides certain opportunities to members of the public to engage directly in the formal regulatory stages of planning examination, and passes responsibility for mandatory pre-application consultation processes to the developer applying for development consent. This paper builds on the literature on public participation in REI decision-making, with an investigation of the experiences of these new

means of participating in the consenting processes for major energy infrastructure projects in England and Wales.

This paper examines the participatory processes for NSIPs consenting in 12 cases of REI, with a focus on the experiences of the public via an online survey conducted in early 2017 and a series of interviews with public engagement facilitators working for developers. The survey provides key data for reporting on the views of the public (local residents, local businesses and local groups), as well as other actors (Local Authorities, NGOs and Statutory Bodies), in light of their involvement. The interview data covers the approaches to enabling public participation adopted by those responsible for pre-application consultation on NSIPs. This paper first outlines the statutory processes for NSIPs, considering the new shape of public participation it offers. It then presents recent research into public views of planning and regulation of REI. The subsequent methods section describes the approach to the survey and interviews. The analysis is then presented, and finally, conclusions consider the theoretical and practical implications of the findings.

## 2. Participating in the new NSIPs processes

The Planning Act 2008 (TSO, 2008) introduced new regulatory processes for consenting what it calls ‘Nationally Significant Infrastructure Projects’ (NSIPs) in England and Wales. The NSIPs regime was brought about as a result of the Labour administration's political

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aspiration for a *national* framing of infrastructure development (Marshall, 2012). The changes were supported *inter alia* by arguments for the urgency of transitioning to a ‘sustainable economy’ (Jackson, 2009), although it is doubtful whether the new system has produced quicker decision-making and infrastructure development (Marshall and Cowell, 2016). The new regime included new processes for regulating major REI, defined by thresholds for generating capacities<sup>1</sup> and provided for the issuing of a series of National Policy Statements, including on Energy (DECC, 2011a) and on REI (DECC, 2011b).

Decisions on whether to grant consent to NSIPs are made by the relevant Secretary of State, who is advised by an Examining Authority (ExA) appointed by the Planning Inspectorate. The ExA conducts an examination, lasting up to six months, and produces a report with a recommendation and detailed reasoning. The key responsibilities for local authorities in the regulatory processes of NSIPs in their area are: advising developers on their pre-application consultation strategy; producing a Local Impact Report for the examination; and working in ongoing governance arrangements especially for construction. Statutory Bodies, such as Natural Resources Wales or the Environment Agency, are required to give advice to the ExA on matters within their remit.

Before its application for a development consent order can be accepted for examination, the intending applicant must prepare a draft Development Consent Order (DCO) and conduct consultations with statutory and non-statutory bodies, and with local people. There is a requirement for the applicant to consult with the Local Authority(ies) in the development of the strategy for these pre-application consultations and submit a report on consultation to the Planning Inspectorate as part of its application. Otherwise the format of the pre-application consultation is not specified.

Once an NSIP examination begins, local people who have registered as ‘interested parties’, whether residents, interest groups or businesses, can make representations. The Planning Act of 2008 grants an interested party (IP) rights to submit ‘relevant representations’ before a deadline, which is given in the application acceptance notice. The processes for the public to engage at the examination stage primarily involve the exchange of written material and the use of the Planning Inspectorate’s website. Section 102 of the Act clarifies that IPs have “the right to be invited to a preliminary meeting; the right to require, and be heard at, an open-floor hearing; the right to be heard at an issue-specific hearing, if one is held; the right to be notified of when the Examining Authority has completed its examination; and the right to be notified of the reasons for the decision.” Thus, in addition to written submissions to the examination, local people can make oral representations at hearings (open floor, issue specific or related to compulsory acquisitions), and further they may be permitted to accompany the ExA during site visits. The conduct of the examination is essentially at the discretion of the ExA; however, there is a general presumption against cross-examination at hearings and against speaking to the ExA during site visits.

So, the Planning Act 2008 offers a new shape for public participation in the regulation of major REI, with very clear opportunities for members of the public. The relationships between local people and local authorities are very different from under more familiar local planning processes. The Planning Act provides new routes through which the public might participate, including giving written and oral evidence in the examination, as well as taking part in pre-application consultation work by the developer. Local authorities are consulted on the format of those consultations. The Examining Authority will assess the application, and must consider written and oral contributions from

<sup>1</sup> The threshold for energy generating stations was set at 50 Mw onshore and 100 Mw offshore. The Energy Act 2016 (TSO, 2016) in effect devolves consenting power for onshore wind energy generating stations to Local Planning Authorities in England and the Welsh Assembly Government in Wales. Although all onshore wind farms were returned to local planning control in 2016.

multiple interested parties and advice from statutory bodies and LAs. Thus people can contribute directly to consideration of proposed development in their local area, including likely impacts and any mitigation of these.

### 3. Views on participation in REI

This study draws on a wealth of earlier research into public views on renewable energy infrastructure (REI) decision-making, including significant work around views on the outcomes of decision as well as the processes leading up to decisions. This section briefly outlines the development of debates around views towards REI planning, and highlights the importance of institutional contexts and views of participation within that work.

The importance of participation to decision-making capacity has been well established (Aitken et al., 2008; Breukers and Wolsink, 2007). Previous studies have established that the acceptance of REI cannot be taken for granted (Barry et al., 2008); opposition is seen by some as problematic for achieving decarbonization of energy production systems (Ellis et al., 2009). However, public views are known to be complex (Cass and Walker, 2009). Bell and colleagues’ work on the ‘social gap’ (Bell et al., 2013, 2005), between high UK wide support for wind farms and opposition in local areas, highlights the need to understand attitudes in detail because, for instance, support may be ‘qualified’.

A relationship has been suggested between positive experiences of consenting processes and subsequent more positive views of the development, adding to the importance of a deeper understanding of local peoples’ views. For instance, communities have been shown to be more likely to accept development for wind energy generation where processes are perceived to be fair (Firestone et al., 2012b; Kempton et al., 2005). The same is said of other infrastructure, e.g. waste facilities (Gallagher et al., 2008). In addition, the openness of processes may influence views on REI development. In particular, this includes dialogue over the price of energy, environmental impacts and being part of a ‘wider project’ (Firestone et al., 2012a), has been shown to positively affect acceptance of development. As Aitken notes, engagement will even link to post-consent relationships (Aitken, 2010a).

Several studies in the Netherlands have demonstrated the value of understanding the effect of the consenting regime on ‘stakeholder perspectives’. In one study, the national environmental organization for the Waddensea region took a more conservative stance than its collective membership, in an attempt to hold on to “precious bargaining power in the decision-making process” (Wolsink, 2000, p. 62). In another, local authorities were shown to make assumptions about local views on development (taking them to be either NIMBY or ‘generally positive’ towards REI) and, by bringing those perspectives into the decision-making, they closed out opportunities for debate over critical issues (Wolsink, 2007b). Of particular note in the latter example (Wolsink, 2007b) is how the site was implicated for REI development by zoning ordinances, which bounded what topics might be consulted on.

Further work unpacks the perspective of the community on those actors who are in control of consenting processes. Walker et al.’s study of community renewable energy projects have shown how trust in ‘groups that take projects forward’ influences views on processes (Walker et al., 2010). This is further substantiated by focus groups on energy system innovation in the UK (Ricci et al., 2010), which demonstrated how communications with the public should be underpinned by trust. That work shows how public views of the value of any information provided within participatory processes depends on their opinions about the source of the expertise. That trust is critical is perhaps unsurprising, but this is a key point in the context of REI as it confirms that it enables ‘bridging’ relationships between local people and authorities (Mandarano, 2015).

The studies discussed thus far support the notion that it is important

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