



Implementing the Planning Act 2008 – Nationally Significant Infrastructure Projects

BRIEFING

Introduction

Against a backdrop of a number of notoriously long-running planning inquiries such as Heathrow T5, a pressing need to make decisions on energy supply and to replace or supplement ageing infrastructure, the planning system was branded by many as too complex, bureaucratic and inefficient.

The UK Government's response for "a faster, fairer and more efficient system" came in the Planning Act 2008. This will replace the current piecemeal approach to authorising major infrastructure projects with a single consent regime, which should simplify the process and cut the time taken for such projects to be approved.

In summary, the new regime provides for:

- The Government to produce National Policy Statements (NPS) that integrate environmental, social and economic objectives and provide clarity on the need for infrastructure;
- Greater onus on promoters to ensure that proposals are properly prepared and consulted on before they submit an application for development consent; and

- A new independent body, the Infrastructure Planning Commission (IPC), to examine and decide on nationally significant infrastructure applications.
- Examination of applications to be streamlined, with evidence probing being led by Commissioners rather than being adversarial. Decisions are to be based primarily on NPSs.

To which projects will the new regime apply?

The new regime will apply to "nationally significant infrastructure projects" in England and, in some cases, Wales within the categories of energy, transport, water, waste water and waste. Nuclear and other power stations, major electricity lines and pipelines, new and extended rail lines, large harbour schemes, reservoirs and airport expansion will be authorised by the new system. Generally, only works above a certain threshold or capacity are affected but any construction of or alteration on the national rail network (excluding stations) in England only which requires consent will be caught by the Act.

Promoters of nationally significant infrastructure projects will need to apply to the IPC for a development consent order and it will be an offence to construct nationally significant infrastructure without consent. They will no longer, however, need to apply separately to other bodies



for planning permission or consents such as those relating to Green Belt development, listed buildings, conservation areas, scheduled monuments, pipelines or energy generation and storage. Though the need for some separate consents will remain, the Act is largely a “one-stop shop”.

National Policy Statements

Twelve NPSs will set out the need and economic case for nationally significant development, including amount, type or size of development appropriate nationally or locally, and may, as in the case of nuclear power stations, identify particular locations, or at least identify the criteria to be used to site particular kinds of infrastructure.

The draft NPS for Ports and the six draft statements on energy generation are out for public consultation. After Parliamentary scrutiny these first NPSs are expected to be “designated” in spring 2010 and this will allow the IPC to decide applications in these sectors. The Government expects to publish a draft NPS for national networks (i.e. strategic roads, railways and rail freight interchanges) in 2010, for hazardous waste, waste water and water supply in 2010, and for airports by 2011, with a view to designating all by 2012.

In making its decision, the IPC must have regard to the NPS whilst considering whether the adverse impact of a proposed development would outweigh its benefits.

The Infrastructure Planning Commission (IPC)

The IPC has been open since 1 October 2009 to advise potential applicants for development consent. It will decide applications from the energy and transport sectors once the NPSs have been designated and from the other sectors as their NPSs are settled. If the relevant NPS has not been designated when a particular application reaches decision stage (likely to be in late 2010 at the earliest), the IPC will make a recommendation to the relevant Secretary of State who will then have three months to make the final decision.

The application process

The process of applying for a development consent order involves six stages, including extensive consultation, publicity and community engagement by the applicant. In summary, the stages are as follows:-

Pre-application stage

The applicant must carry out pre-application consultation on the project, and on an environmental impact assessment which will usually be required. This will involve publicising and consulting very widely on the proposed scheme, including local authorities, people with rights over the land, and the local community. The applicant must also take account of consultation responses before submitting an application to the IPC. If the promoter has not given effect to representations on consultation made to it, the IPC will need to be satisfied that it has acted reasonably or it may reject the application.



Applying for a development consent order (DCO)

A DCO must contain all the authorisations a promoter will need to construct and operate its scheme, including associated development. Such authorisations may include, for instance, the diversion of watercourses or stopping up or diversion of highways. The particular authorisations will clearly depend on the nature of the scheme, but most will contain powers for the acquisition of land and related compensation.

Rather like a planning application, an applicant for a DCO will need to complete an application form and supply with it all the necessary supporting documents to make up that application. This will include the draft Order, plans, environmental statement, drawings and reports on consultation and on the effects on natural and historic features.

Acceptance by the IPC

The IPC has 28 days to decide whether an application can be accepted as valid – i.e. whether it properly relates to a nationally significant infrastructure project, has been submitted in the required form and following the required procedure, and meets the IPC's standards.

Pre-examination stage

The promoter must give notice and publicise the accepted application, allowing at least 28 days for representations; and the IPC must notify relevant local authorities of their right to submit a local impact report. Either a single Commissioner or a panel of at least three will be appointed to

consider the application and, at or following a pre-examination meeting, will set a procedure and timetable for its examination.

Examination

The Commissioner or panel will have six months to carry out the examination. Examination will be primarily by way of written representations. But there may be hearings about specific issues; and there must be hearings about compulsory acquisition of land if the landowner requests and "open-floor" hearings if affected local authorities or certain other bodies (including the promoter) wish to make oral representations. Hearings will be in public and are intended to be inquisitorial rather than adversarial.

Decision

The IPC will then have three months to issue a decision (or to make a recommendation to the Secretary of State if no NPS is yet in place). It may either refuse the application or make an Order granting development consent, with or without conditions. In reaching a decision, it must have regard to local authorities' local impact reports and any other matters it considers important – such as the suitability of the proposed site and technical issues. But it must decide the application in accordance with the NPS unless doing so would breach legal obligations or result in the adverse impact of the development outweighing its benefits. The IPC must accompany its decision with a statement of reasons.



Post-decision stage

The Act allows six weeks for a legal challenge to be brought.

The way ahead

Much will depend on the outcome of the general election in 2010 and the attitude in practice of the Government elected. Any changes to the new regime could take time to be implemented. An incoming Conservative government is expected to absorb the IPC within the Planning Inspectorate, and reduce its role to making recommendations to the Secretary of State, who will make the final decision on an application.

Even if the IPC survives in current form, it remains to be seen how much faster, fairer and more efficient the process for deciding applications for major projects becomes. The new procedures will certainly be challenging for promoters. They will need to carry out considerable work before submitting an application if they are to comply with

the statutory requirements on consultation and public engagement procedures and to prepare for the examination stage within the timescales permitted.

STOP PRESS: The new Coalition Government has now announced that the IPC is to be abolished and absorbed into the Major Infrastructure Planning Unit. Hopefully, full details will become clearer when the Decentralisation and Localism Bill is published later this year.

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