

**THE PLANNING ACT 2008**  
**INFRASTRUCTURE PLANNING COMMISSION**

**Suzanne Ornsby**

What does the Planning Act 2008 do?

- Establishes a new decision making body, the Infrastructure Planning Commission (“the Commission”) and a new compulsory consent procedure for nationally significant infrastructure projects mainly in England (“NSIP”).

What does it require?

Development Consent

- A “development consent” is required for development that is or forms part of a “nationally significant infrastructure project” [section 31].
- It is intended to be a “one stop shop consent” so that other consents are not needed and indeed in certain circumstances can no longer be obtained under pre existing consent regimes [section 33].
- In any event if it is a nationally significant infrastructure project a development consent order must be obtained before development can proceed.

Nationally significant infrastructure projects

- Nationally Significant Infrastructure Projects are prescribed in the Act [sections 14 to 30]. The cover the five fields of Energy; Transport; Water; Waste Water and Waste.
  - o Energy [sections 15 to 21].
    - Onshore Generating Station more than 50 megawatts.
    - Offshore Generating Station more than 100 megawatts.
    - Installation of an electric line of more than 132 Kilovolts.
    - Underground gas storage facility or an LNG facility or a gas reception facility of at least 43million standard cubic metres per day or a flow rate of at least 4.5 million standard cubic metres per day.
    - Gas transporter pipeline of more than 800mm in diameter and 40km in length with a design operating pressure of more than 7 bar gauge and conveying gas for supply to at least 50,000 customers.
    - Any other pipeline which is a cross country (England Wales or Scotland) pipeline which would otherwise require authorisation under the section 1 of the Pipe-lines Act 1962.

○ Transport [sections 22 to 26]

▪ Highways.

Construction, improvement or alteration of a highway where the Secretary of State is the highway authority or where the alteration is being carried out by or on behalf of the Secretary of State.

▪ Airports

The construction, alteration or increase in permitted use of an airport where serving at least 10million passengers per year or cargo transport of at least 10,000 air transport movements of cargo aircraft per year or an increase in capacity by at least that amount.

▪ Harbour Facilities.

The construction or alteration of a harbour facility where the construction or alteration is for container ships of 500,000 TEU; for ro-ro ships of 250,000 units for cargo ships of any other type of 5m tonnes.

▪ Railways.

The construction or alteration of a railway where the railway concerned is part of a network operated by an approved operator.

▪ Rail Freight Interchanges.

The construction or alteration of a rail freight interchange of at least 60 h in area, involves consignments of goods from more than one consignor and to more than more consignee and has at lest 4 goods trains per day.

○ Water [sections 27 to 28]

▪ Dams and Reservoirs.

The construction or alteration of a dam or reservoir where the volume of water is at least 10 million cubic metres.

▪ Transfer of water resources.

The volume of water to be transferred is expected to exceed 100 million cubic metres per year.

○ Waste Water [section 29]

- The construction or alteration of a waste water treatment plant where the expected capacity exceeds a population equivalent of 500,000.
- Waste [section 30]
  - The construction or alteration of a hazardous waste facility where the disposal of hazardous waste by landfill or deep storage is more than 100,000 tonnes per year and in any other case is more than 30,000 tonnes per year.

### Application for consent to the Infrastructure Planning Commission

- An application for an order granting consent for a nationally significant infrastructure project must be made to the Infrastructure Planning Commission [section 37].

### Pre Application Procedure

- Where an applicant proposes to make an application he must follow a pre application procedure in respect of the “proposed application” [section 41].
- This requires the applicant to consult on the proposed application by providing to consultees “consultation documents” and to give these individuals at least 28 days to respond. The consultation documents are documents supplied for the purpose of consulting that individual. The consultees are as follows [sections 42 to 46]:-
  - Persons prescribed.
  - The local authority in whose area the proposal is located and any other authority who shares a boundary with that authority.
  - The GLA.
  - Any person within specified categories 1 to 3 which includes:-
    - Owners, lessees, tenants or occupiers of the land.
    - Any person who has an interest in the land or who has power to sell , convey or release it.
    - Any person who may be entitled to make a compensation claim.
- The applicant must also prepare a statement setting out how the applicant proposes to consult people living in the vicinity of the land. Before preparing this statement the applicant must consult with the relevant local authorities what is to be in the statement. The authority has 28 days to give its response. The applicant must then publish the statement [section 47].

- The applicant in deciding whether to make any changes to the proposed application must have regard to any response it receives under the pre application procedure [section 49].

### The application procedure.

- The application for a development consent order must:-
  - o Specify the development to which it relates.
  - o Made in the prescribed form.
  - o Be accompanied by the “consultation

### Public Register

- The Commission is required to maintain a register of applications it receives and of the orders it makes and this register must be published and available for inspection [section 39].

### Information and entry onto land

- The Commission also has powers to require the giving of information to applicants re land interests and the power to grant the entering of land [sections 52 and 53].

### Validation of the application

- The Commission may accept an application only if it concludes that it is an application which complies with the requirements of the Act and any regulations made under it. It must also consider the consultation report and any representation from a local authority as to whether the applicant has complied with its pre application obligations [section 55].

### Representations on the application

- Where the Commission accept an application the applicant must give notice to persons prescribed; relevant local authorities; the GLA and any person falling into categories 1 to 3; this notice must set out the deadline for representations to be made and submitted to the Commission on the application and this deadline must allow at least 28 days for responses to be made; each person to be notified must be supplied by the applicant with the application documents. The applicant must then certify that it has complied with these requirements [sections 56 to 59].

### Local Impact Report

- When the Commission have accepted an application and the applicant has complied with the notification requirements, the Commission must give notice to each relevant authority and the GLA inviting them to submit a “local impact report”. This is a

report on the likely impact of the proposed development on the authority's area. The Commission will impose a deadline for submission of the local impact report [section 60].

#### Panel or Single Commissioner

- A decision will be made by the chair of the Commission whether the application is to be handled by a Panel or a single Commissioner. Guidance will be issued by the Secretary of State on this [sections 61 to 62].

#### Application of National Policy Statement

- Where a National Policy Statement has effect in relation to development of the description to which the application relates the Panel appointed has the functions of examining and deciding the application [Section 74].
- In any other case the Panel has the functions of examining the application and reporting to the Secretary of State its findings, conclusions and recommendations [section 74].

#### Reporting and decision- the examining authority

##### Single Commissioner or Panel

- Where a single Commissioner examines an application he must make a report setting out his findings, conclusions and recommendations which goes to the Commission if a National Policy Statement has effect in relation to the proposed development and to the Secretary of State in any other case [section 83]. Where it is sent to the Commission the decision is made by a majority of at least five members of the Commission's Council. A single Commissioner or a panel are referred to as the "examining authority" [section 86].
- It is for the examining authority to decide how to examine an application. In deciding how an application is to be examined the examining authority must comply with the requirements of the Act and any rules made under it and must have regard to any guidance given by the Secretary of State [Section 87].
- The examining authority may disregard any representations that are vexatious or frivolous; relate to the merits of a national policy statement or relate to compensation [section 87].

#### The initial assessment and first meeting

- The examining authority must make an initial assessment of the principal issues arising on the application and must invite the applicant and interested parties to a meeting to hear representations on how the application should be examined [section 88].
- An interested party is the applicant; a statutory party; a relevant local authority; the GLA or a person who has made a relevant representation [section 102].

### Examination of the Application

- An examining authority's examination of the application is to take the form of consideration of written representations about the application. Where an examining authority decide that it is necessary to include the consideration of oral representations about a particular issue to ensure adequate examination of that issue or that an interested party has a fair chance to put its case it must hold a hearing. At the hearing each party is entitled to make oral representations about the issue [sections 90 and 91].

### Compulsory acquisition hearing

- Where an application includes a request for an authorisation for compulsory acquisition if one affected person wishes a hearing to be held then the examining authority must cause a compulsory acquisition hearing to be held. At such a hearing the applicant and the affected person are entitled to make oral representations [section 92].

### Open floor hearing

- If notified by an interested party the examining authority must hold an open floor hearing where interested parties are entitled to make oral representations [section 93].

### Asking questions/cross examination

- At any oral hearing it is for the examining authority to decide whether a person making oral representations may be questioned by another person. The general principle to be applied is that oral questioning of a person making representation should be undertaken by the examining authority except where oral questioning by another person is necessary to ensure adequate testing of any representation and that a person has a fair chance to put its case [section 94].

### Time period for examination and reporting

- An examining authority is under a duty to complete its examination by the end of 6 months from the date when the first meeting to discuss the principal issues and procedure is held [section 98].
- Any report required to be made to the Secretary of State must be made within 3 months after the date for completion of the examination although there is a power for the chair of the Commission to extend this deadline [section 98].

### Matters to take in to account when deciding an application

- Where a Panel or the Council decide an application they must have regard to:
  - o Any relevant national policy statement.
  - o Any local impact report.

- Any matters prescribed.
- Any other matters the panel or Council thinks important and relevant [section 104].

### National Policy Statements

- The Panel or Council must decide the application in accordance with any relevant national policy statement except in certain circumstances which include if the panel is satisfied that the adverse impact of the proposed development would outweigh its benefits [section 104].

### Sustainability Appraisal of NPS

- National Policy Statements are issued by the Secretary of State. Before a statement can be designated as a NPS the Secretary of State must carry out an appraisal of the sustainability of the policy set out in the statement [section 5].

### Consultation and publicity on NPS

- There are consultation and publicity requirements that have to be complied with together with parliamentary requirements before a statement can be so designated [section 5].
- The Secretary of State must consult on and publicise on any proposal for a NPS or its amendment. If the policy proposed identifies one or more locations as suitable for a specified description of development the Secretary of State must consult the relevant local planning authorities and the GLA on the appropriate steps for consultation [sections 7 and 8].
- An NPS must be publicised and laid before Parliament. If either House of Parliament make a resolution re the proposed policy or a committee of either House makes a recommendation then the Secretary of State must lay before Parliament his response [section 9].
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### Content of NPS

- A policy set out in an NPS may set out or identify:-
  - The amount, type or size of a development which is appropriate nationally or for a specified area.
  - The criteria to be applied in deciding whether a location is suitable or potentially suitable for a specified description of development.
  - The relative weight to be given to specified criteria.
  - Identify one or more locations as suitable or unsuitable for a specified description of development.

- Identify one or more statutory undertakers as appropriate persons to carry out a specified description of development.
- Circumstances in which it is appropriate for a specified type of action to be taken to mitigate the impact of a specified description of development.
- If a NPS sets out policy in relation to a particular description of development it must set out the criteria to be taken into account in the design of that description of development.

### Climate change

- An NPS must give reasons for the policy set out in the statement and these must include how the policy takes account of Government policy relating to the mitigation of and adaptation to climate change.

### Sustainable development

- In preparing an NPS the Secretary of State must do so with the objective of contributing to the achievement of sustainable development [section 10].
- The Secretary of State has the power to designate a statement as a NPS even if the statement precedes the commencement date of the Act [26 November 2008] [section 12].

### Legal challenge to NPS

- Legal challenges to a NPS is by way of Judicial Review but with a 6 week time limit [section 13].

### Timetable for decisions

- The timetable for decisions is:-
  - For a Panel and the Council three months after the completion of the examination, which itself must be completed within 6 months of the first meeting – a total of 9 months from the first meeting.
  - For the Secretary of State three months following receipt of the report which must be produced within three months of completion of the examination – a total of 12 months from the first meeting [section 107].
  - These deadlines are extendable.

### Grant or Refusal

- The decision maker must prepare a statement of reasons for deciding to grant a development consent or to refuse one [section 116].

- A grant of a development consent may include conditions and may authorise the compulsory acquisition of land it may also include the extinguishment of public rights of way subject to certain requirements. Section 106 agreements can also be entered into to regulate the land concerned as part of a development consent [sections 120, 136 and 174].
- Where an application for development consent includes land which is the property of a local authority and a representation has been made by that local authority before the completion of the examination for the application and has not been withdrawn an order granting development consent is subject to special parliamentary procedure unless the acquiring authority is itself a local authority or statutory undertaker [section 128].

### Legal Challenges to a grant or refusal of a development consent

- This is by way of Judicial Review but with a six week time limit [section 118]

### Enforcement

- An enforcement regime is introduced for development carried out in the absence of a development consent enforceable by local planning authorities [section 160 to 173].

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