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The Planning Act 2008

The Planning Act received Royal Assent on 26th November 2008 which was a year to the day from when the Bill was first introduced by the Government. There have been some changes between the original Bill presented on 27th November 2007 and what is now the Planning Act 2008 but, in general, the fundamental provisions and changes to the planning system sought by the Government have remained intact.

The major provisions of the new Act are:

- National Policy Statements
- The Infrastructure Planning Commission
- Community Infrastructure Levy

There are other changes to the application, appeal and Local Development Framework procedures.

National Policy Statements

A new framework of National Policy Statements (NPS) will set the policy context against which major infrastructure projects will be considered. In effect, the Secretary of State will use NPSs to detail national infrastructure priorities for the country and the decisions as to whether to allow individual projects to go ahead will then be taken within the framework set by the Secretary of State.

Eleven National Policy Statements are currently planned. These are:

- overarching energy
- fossil fuels
- renewable energy
- electricity networks
- gas and downstream oil infrastructure
- nuclear power
- ports
- national networks (strategic highway and rail networks)
- aviation
- water supply and waste water treatment
- hazardous waste (not including nuclear waste)

Scrutiny of draft NPSs is expected to begin in 2009 which will include input from public consultation and Parliament.

The Government will set out the case for infrastructure in the NPSs also integrating wider social, economic and environmental policies. Any promoters of projects will be required to consult local communities and other key stakeholders prior to submitting applications. The decisions on nationally significant applications will be made by the Infrastructure Planning Commission (IPC), within the framework of the NPSs.

Schemes promoted under NPSs must still have regard to the provisions of the Development Plan and, where appropriate, be the subject of an Environmental Assessment.

Where land is blighted by a NPS then the owner has the same rights for compensation as for other blighted land.

Infrastructure Planning Commission

A new Infrastructure Planning Commission (IPC) is to decide applications for nationally significant infrastructure projects and grant 'Development Consent'. The Press Notice issued by the Department Communities and Local Government on 27th November 2008 referred particularly to delivering renewable energy projects but the IPC will consider other major infrastructure schemes such as roads, public transport and reservoirs.

The IPC will only determine proposals where there is a NPS covering the relevant type of infrastructure. For major projects where no NPS exists the IPC will make a recommendation to the Secretary of State who will then determine whether to grant Development Consent.

This approach to determining major infrastructure applications has been introduced principally in response to the time it took for the application for Terminal 5 at Heathrow Airport to be determined - over 8+ years (called-in March 1993, Inquiry May 1995 to March 1999 and the decision November 2001 - 8+ years). There will be a clear timetable for the examination process to consider any application

and decisions are expected to be made in about one year. The expectation is that between 40 and 50 applications will be considered by the IPC.

The IPC will operate within a framework established by Ministers and its relationship to Government will be akin to the Monetary Policy Commission which sets interest rates - independent but working within the wider framework established by Government.

An important consideration is that the Development Consent is not just a planning permission but also confers certain rights to deliver the project including, potentially, the compulsory purchase of land where there is an overriding public interest.

There will remain an opportunity for the community to participate in the process and during the consideration of the application by the IPC. The Planning Minister has stated that the IPC creates:

a new integrated planning system for major infrastructure that will enable us to make the big decisions in under a year, give people three chances to be heard rather than just one as now, and make the entire process more accountable and transparent.

This means:

- at the pre-application stage, promoters will be required to consult relevant local authorities and local communities on project proposals, giving them a better opportunity to influence outcomes at an early stage
- the examination stage will be easier for the public to engage with; anyone who registers an interest will be able to trigger an open floor hearing, and all interested parties will have a right to be heard at that hearing; in addition, where the commission calls a hearing to probe a specific issue, interested parties will have a right to be heard at that hearing on that issue.

However, having regard to the NPS framework within which the IPC will operate, it will be interesting to see what weight is given to local objections.

In early 2009 the Government will set out a timetable for how the IPC will be established and operate.

Community Infrastructure Levy

A Community Infrastructure Levy (CIL) is to be introduced as a means of securing infrastructure funding and, in the short term, will work alongside Section 106 obligations. However, it is important to note that the introduction of CIL by local authorities is discretionary.

One concession made by the Government was to remove a clause linking the levy to increases in land value. The Government has also confirmed that registered social landlords with charitable status will also be exempt from CIL.

The Act contains merely the framework for the Levy - the details will appear in Regulations likely to be published in Spring 2009 - the target date for introducing CIL is September 2009. However, the Government's views about how CIL would operate were outlined in policy document published on 5th August 2008.

Changes to the Application and Appeal Processes

Appeals

There is now the ability for a charge to be made to appeal. No details on the likely level of this fee have been published but it is suggested that the fee will be introduced in April 2009.

There is now the ability for the Planning Inspectorate to determine which procedure will be used to determine an appeal. The criteria against which the Inspectorate will judge which procedure to use have yet to be published.

Minor Amendments - Non Material

There are provisions which formalise the procedure for non-material amendments to planning permissions. This is to be welcomed because of the issues associated with some local planning authorities refusing to deal with minor amendments despite case law. The application will need to be made by the owner and there is scope for conditions to either be removed or new ones added.

Similar Applications

There are statutory powers for local planning authorities to refuse to determine applications for scheme previously refused on appeal, including for Listed Building Consent.

Climate Change and Design

There is now a statutory duty (alongside sustainability objectives) for Development Plans (taken as a whole) to include policies designed to ensure that the development and use of land within the local planning authority's area contribute to the mitigation of, and adaptation to, climate change.

As part of the application process, design is now part of the statutory considerations.

These are technical changes because they are already policy matters considered by local planning authorities.

Local Development Framework

There are changes to the Local Development Framework (LDF) process. These include changes to:

- the manner in which Supplementary Planning Documents (SPDs) and Statements of Community Involvement are prepared. They will no longer have to be included in the Local Development Scheme which is agreed by the Secretary of State. SPDs can be produced by the local planning authorities and still be treated as being part of the Development Plan.
- the inclusion of a new obligation to include, in Development Plans, policies relating to climate change.
- avoiding the need for local planning authorities to start again from scratch when Development Plan Documents are found by the Courts to be defective. The Courts can say what action is required to address the deficiency.

Easements

A power to enable local planning authorities to override easements in order to develop land pursuant to the grant of planning permission. This power is particularly directed at land assembly and regeneration projects where land has been acquired for planning purposes. Compensation is, however, payable.

Compensation for Revocation

If 12 months notice is given, there will be no ability to claim compensation for a planning permission being revoked because of a Development Order.

Procedure

Most of the Act is now in force but a lot of details have yet to be clarified. There is an expectation that there will be a significant number of consultation documents and draft Regulations being published in early 2009.

Not in the Act - More Changes in 2009?

The Government had originally intended to remove the right of appeal for small development proposals and the introduction of local member review panel. This has been dropped.

There was pressure from the House of Lords to pay special regard, to preserving gardens, groups of gardens and urban green spaces to counter 'town cramming'. The Government argued that there are already sufficient policy provisions in PPS3 to

safeguard gardens but has agreed to a review of the issue commencing in early 2009 to collate any evidence that there is a problem of 'town cramming'.

The Killian Pretty Review published on 24th November 2008 is making 17 recommendations for further changes to the planning application system to improve its efficiency. The Government will publish its response in early 2009 but indications are that the introduction of permitted development rights for non-householder properties (see the report also published on 24th November 2008 - Non Householder Minor Development Consents Review) and a reduction in the amount of supporting information required for an application (a more proportionate approach) are likely to be quickly adopted.

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