

PROJECTS AND CONSENT, FLEXIBILITY VS PLANNING



Highlights from the Major Projects Association event held on **18 July 2017**

Early contractor involvement (ECI) in the planning process and the establishment of a project management office to drive capability across the whole project were identified as critical in ensuring that flexibility and deliverability are built into the Development Consent Order (DCO) planning process for infrastructure projects. This Major Projects Association seminar focused on the findings of recent research by Professor Janice Morphet and Dr Ben Clifford of the Bartlett School of Planning, UCL into the effectiveness of the current DCO planning process for Nationally Significant Infrastructure Projects (NSIPs).

This UCL research was commissioned by the National Infrastructure Planning Association (NIPA) in September 2016 to consider the question: **Does the 2008 Planning Act process deliver the certainty and flexibility necessary to attract investment, permit innovation during the design and construction process and support cost-effective infrastructure delivery – whilst providing appropriate protection for affected landowners and communities?**

'It is about clarifying the balance of public good versus private rights.'
Simon Webb, Executive Director, The Nichols Group

APPROPRIATE LEVELS OF DETAIL

The research highlighted that the levels of detail included in DCOs tended to be high, often introduced by risk-averse promoters and their advisers. This was highlighted as a potential cause of problems later on in project delivery. For example, too much detail in the DCO might prevent advances in technology from being fully exploited or add restrictions to construction practices which increase the cost and difficulty of construction.

That said, it was clear that building higher degrees of flexibility into the DCO drafting had to be properly justified, not least around the compulsory purchase of land and other environmental issues which might impact substantially on stakeholders and communities.

'We recognise that one size does not fit all. The drivers for flexibility and deliverability will not be the same for all infrastructure projects.'
Professor Janice Morphet, Bartlett School of Planning, UCL

ROUTES TO FLEXIBILITY

When it comes to building more flexibility into the NSIP planning process, the theory of aggregating marginal gains should be applied to ensure the appropriate amount of detail is specified. These might include the use of the so-called '**Rochdale Envelope**' or similar environmental assessment techniques and 'not environmentally worse than' principles that are designed to take into account unforeseen future land use or policy changes.

The use of limits of deviation rather than precisely specified locations or routes might be considered, and temporary possession of land during construction might also be negotiated with landowners to prevent the need for unnecessary purchasing.

While such hybrid approaches were already possible within the DCO process, planners had to be aware that stakeholders did not always have confidence that such an approach would be accepted.

'Think...engage...assess...consult...think again; then draft and justify.'
Robbie Owen, Partner, Head of Infrastructure Planning & Government Affairs, Pinsent Masons LLP, & NIPA Board Director

COMMON ISSUES IDENTIFIED

- ECI can be a route to a more efficient outcome. However, it is important that the focus on achieving consent and on preparing for construction are kept separate.
- More needs to be done to help the industry to learn lessons from past experiences in drafting DCOs and delivering projects, in particular a greater understanding of how the wording and framing of a DCO can impact and affect flexibility later during construction.
- Although there are a number of clear processes for post DCO consent amendment, many promoters highlighted their concerns about the consequences, in terms of cost and programme, of going through such processes.

'How can we provide for tomorrow if we don't listen to the views of today?'
Michael Summerfield, Senior Consultant, CJ Associates

GETTING IT RIGHT FIRST TIME

The UCL research made a number of recommendations covering activities across all stages of the planning process. These highlighted that the issue of balancing flexibility with detail cut to the heart of the NSIP planning process and so had to be considered from the very start of the project.

Crucially, this meant focusing effort on getting the drafting of the DCO – understanding what the project actually needed to succeed – right first time. While changes can be made midway through the application or even after consent has been granted, it adds complexity and delay and so should be avoided. This means promoters and their advisers should spend more time at the start identifying what the potential pinch points will be and so understand what flexibility is needed and be able to justify why.

EARLY AND MEANINGFUL ENGAGEMENT WITH STAKEHOLDERS AND THE COMMUNITY

Communication is very much at the heart of this process. It is a ‘golden thread’ running throughout, and key to achieving the right balance between providing sufficient detail to enable local stakeholders and communities to understand the impact of proposals and providing the flexibility required to deliver the project efficiently.

Getting the balance right between detail and flexibility is also key to bridging the credibility gap – real or otherwise – between the needs of the local community and the demands of the scheme promoter.

POINTS FOR FURTHER DISCUSSION

- Promoters should consider some form of early contractor involvement in the development and pre-application processes – what might this look like?
- Should promoters appoint a project management capability for the whole project from the outset? What benefits would this bring?
- Does the industry need to develop new specialist skills to ensure that promoters have the right advice around the DCO process?

CASE STUDIES

Tideway

- The DCO for this project gained consent in 2014. While the DCO is not perfect in terms of the balance between detail and flexibility, the team is finding its way through as it moves into the delivery phase.
- A number of changes have already been sought – including the use of a non-material amendment or a change at Beckton Sewage Treatment Works. Although taking five weeks to prepare and six weeks for a decision, it required a lengthy three to four months of consultation with stakeholders.

Galloper offshore wind farm

- Galloper Wind Farm is a 336MW offshore wind farm project, currently being constructed 30km off the coast of Suffolk, with cables being brought ashore at Sizewell; it is one of the first projects to use the DCO process.
- The promoter had to maintain flexibility to cope with changes. For example, as the design evolved so did turbine capacity – the average 2.4MW is now edging towards 8MW and on to 15MW per machine. This clearly has major implications on tower, foundation and blade size, and on layout and construction techniques.

Highways England

- There are currently 112 projects in Highways England’s first Strategic Roads Programme, of which around 30 have the potential to use the DCO process for planning consent. To date the organisation has experience of achieving five DCOs.
- With focus now very much on deliverability across the whole life of the asset, having contractors on board early to influence the design enables a better conversation around innovation. However, having them on board during the planning process also provides a credibility boost, making them more connected and engaged with stakeholders and able to describe proposals to the community more effectively.

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