



## THE PLANNING ACT 2008

Seminar 147 held on 24th February 2009  
at The Royal College of Pathologists, London

SUMMARY

The progress of the Planning Bill through Parliament generated much debate before receiving Royal Assent on 26 November 2008.

Proposals relating to the authorisation of nationally significant infrastructure projects (NSIPs) proved to be particularly controversial, with many planning commentators expressing concern at what they perceived to be an attempt to 'fast track' these applications at the expense of democratic accountability.

The Planning Act puts in place a radical new system for these projects, and it is essential that organisations have an understanding of how the regime will operate. Chaired by Roy Vandemeer QC, this half day seminar looked at the key features of the Act, and was of particular relevance to professional advisers and project promoters, as well as project managers in both local and central government and the private sector.

## NATIONAL POLICY STATEMENTS AND NATIONAL INFRASTRUCTURE PROJECTS

The first presentation from the Department of Communities and Local Government summarised the background and key elements of the Act, the proposed timetable for implementation and transitional arrangements. More detailed information is available in the Department's 'route map' for [Infrastructure Planning Commission](#) implementation.

It was explained that the existing planning system for NSIPs is no longer fit for purpose for the adoption of major infrastructure projects: for example Heathrow Terminal 5 (T5) took seven years from the application to the decision.

The new regime is designed to be more streamlined and involve more participation, with the aim of giving faster, fairer and more accountable decisions, typically in less than 12 months. Formerly, projects such as T5 required several consents under different Acts of Parliament to go forward, but the new approach allows for a single consent regime for NSIPs and their associated development.

The Planning Act 2008 sets the framework and makes statutory provision for the new regime for NSIPs. The Infrastructure Planning Commission (IPC) is a new independent non-departmental public body that will examine NSIPs and make development consent decisions.

Secondary legislation and statutory guidance will flesh out the detail of the new regime and its processes – for example applications, determinations, fees, and Environmental Impact Assessments (EIAs). However, applications that have already been submitted under the existing consent regimes will be decided under those regimes.

...continued

The Act makes provision for a Community Infrastructure Levy (CIL), with details to come forward in secondary legislation.

The cornerstone of the new system will be a series of national policy statements (NPSs), which will be location specific where appropriate. Drafted by relevant government departments, NPSs will set out the primary infrastructure policy frameworks in the fields of energy, transport, water, waste water and waste. Each NPS will provide a clear strategic statement of national policy, integrating social, economic and environmental objectives, and will be enforced and assured by Appraisal of Sustainability, public consultation and parliamentary scrutiny.

The first tranche of NPSs, relating to non-nuclear energy and ports, is currently scheduled for publication and consultation during summer 2009, with designation in early 2010. Promoters of NSIPs are being asked for their input, for instance in the development of NPSs and to test the implementation plans.

#### CORE ELEMENTS OF NPSs INCLUDE:

- Identifying and justifying the need for the infrastructure.
- Setting out considerations of sites for locationally specific NPSs.
- Identifying the impacts of the type of infrastructure and giving guidance to the IPC on how to weight them.
- Giving clear policy direction on how the IPC should assess impacts and come to a decision on applications – essentially weighing costs against benefits.

#### THE INFRASTRUCTURE PLANNING COMMISSION AND NATIONAL INFRASTRUCTURE PROJECTS

The presentation from Bircham Dyson Bell looked at the role of the IPC, and considered a number of practical issues of importance to promoters.

With a few exceptions, the IPC will make decisions in accordance with the relevant NPS – this is different from the current system, which is largely an adversarial process. A preliminary meeting will be held to hear representations as to how an application should be examined. Applications will be examined by a panel of commissioners (or with smaller projects, by a single commissioner) with the decision made by the Commissioners Council. The examination should be completed within six months, with a decision within a further three months. If it approves the project the IPC will then make a development consent order.

Advice may be given to applicants, but only in respect of the administrative process and not on the merits of the project.

In contrast with the existing system, the new process will normally rely on written evidence. Given the many interests of the promoter, the local planning authority and other third parties, it may be that six months will not allow sufficient preparation time for everything to be put on paper before the examination.

One of the most important new requirements is that the promoter must undertake pre-application consultation. The Act makes it clear that the IPC can refuse an application they consider has been inadequately prepared or consulted on. In the past, a poorly prepared application tended to lead to long inquiries, and these new requirements are key to streamlining the process.

Broadly, effective consultation involves presenting the appropriate people with the right material at the right time, and providing adequate response time; promoters must then give themselves enough time to take the responses into account. Complying with the consultation requirements will involve significant resource and project management implications.

The new system will have an impact on the cultural issues of the promoter's organisation in terms of project preparation, decision making, developing the project and then launching it as an application. It was noted that local authorities have an important role to play in the new regime, and the resource implications of participating fully in the consultation process means that funding may be required.

The presentation concluded with an overview of the scope of development consent orders. The model clauses are currently being drafted, and although based on the old regime, promoters will need to look closely at the powers and provisions – for instance to know what can be included in the package they are promoting and seeking consent for.

## THE COMMUNITY INFRASTRUCTURE LEVY AND NATIONAL INFRASTRUCTURE PROJECTS

The presentation from Denton Wilde Sapte explained the proposed arrangements for the [CIL](#), looking at the way in which the structure has developed and the issues that remain to be resolved.

CIL is a charge which local authorities in England and Wales will be empowered (but not required) to charge on most types of new development in their area. The charges will be based on simple formulae which relate the size of the charge to the size and character of the development paying it. The proceeds of the levy will be spent on local and sub-regional infrastructure to support the development of the area.

The precursor to CIL is the system of tariffs. These are cash payments for a unit job, for example on the basis of a single housing unit or each metre of commercial floor space put into a development

Examples of existing well-defined tariffs were discussed, such as the Milton Keynes expansion and the Thames Gateway Development. The CIL process will be similar to the one used for tariffs, where the cost of the infrastructure required to support the development is worked out, apportioned between the various users, and decisions made about how much people can afford to pay. It was noted that the public sector still has to pick up considerable bills for infrastructure tariffs.

A number of issues were highlighted, for instance the difficulty of calculating the cost of infrastructure required in 10-15 years' time, and the fact that the levy is intended to provide new money, not to replace existing infrastructure funding or to correct deficiencies. The relationship between CIL and section 106 was questioned: if section 106 is cut back to exclude CIL infrastructure, then local authorities, who theoretically have the option of not using CIL, will find they are unable to collect contributions unless they implement it.

In London the Mayor can make a separate levy, but outside the city the local planning authority will collect CIL and it appears that there are no restrictions on how the money is spent. Problems could arise where parts of the infrastructure are national schemes, and thus outside the responsibility of the local council.

The conclusion was that CIL is a useful tool, but needs considerable further work before it is capable of introduction. A clear commitment is required (from central government to regional government downwards) for public infrastructure funding, with a transparent and long-term delivery programme.

## PROMOTING NATIONAL INFRASTRUCTURE PROJECTS

Transport for London (TfL) is a completely integrated transport authority reporting to the Mayor of London. This presentation looked at the way in which major transport schemes in London are planned and how consents have been secured. Strengths and weaknesses of the existing system and opportunities for improvement under the new regime were considered.

TfL is responsible for producing a Transport Strategy for London, which sits alongside the London Plan as the statutory planning document for London. Both these documents are currently under review to meet the new Mayor's priorities and policies for London. NPSs will have reference to London, particularly for the strategic road and rail network and rail freight interchanges. This represents an excellent opportunity for the London Plan and the relevant NPSs to be aligned in these and other areas during 2009. However, there would be implications for the Plan if the preparation and adoption of the NPSs is delayed.

The scale and range of TfL projects means that a variety of consents routes have been used in the past, such as a hybrid bill for Crossrail, a private bill for the Jubilee Line and The Transport and Works Act (TWA) for Docklands Light Railway (DLR) extensions and tube station upgrades

The new Planning Act will cut across many future infrastructure projects, but the extent of the impact is at present unclear and projects will need to be reviewed on a case by case basis. Proposed major new projects include Crossrail 2; DLR and tube extensions; river crossings; rail freight facilities; and accommodating high-speed rail in London. New rail schemes and rail freight facilities might fall within the remit of the Act, but it is possible that future DLR extensions and new highway schemes will not; TfL hope to be able to continue using existing consents routes such as TWA for smaller schemes.

## CONCLUSION

The Chairman welcomed the attempt to improve the planning system for national infrastructure projects.

He emphasised the need for national policies so that the planning process can start without having to discuss the background principles. However, whilst clear national policies are required, these must not be too rigid, and must be viewed as fair by the public.



## PARTICIPATING ORGANISATIONS

Bircham Dyson Bell LLP  
British Energy  
Chiltern Railways  
CMS Cameron McKenna LLP  
Costain Ltd  
DB Regio UK Ltd  
Defence Estates  
Denton Wilde Sapte  
Department for Communities and Local Government  
Department for Transport  
EC Harris LLP  
Ernst & Young LLP  
Halcrow  
Highways Agency  
Kellogg Brown & Root  
KPMG LLP  
Lend Lease Projects  
Major Projects Association  
Medicapital Bank  
National Grid plc  
Parsons Brinckerhoff LLP  
Shadbolt & Co LLP  
Thames Water Property Services  
Transport for London  
Henley Business School,