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Getting to Grips with Infrastructure Projects as a Local Authority

19 April 2021

Speakers



Michael Bedford QC



Ruchi Parekh

Upcoming Webinars



4th May 2021 -11am - **Planning for schools: academy and free school planning appeals**

Speakers: Lisa Busch QC, Harriet Townsend, Ryan Kohli and Rowan Clapp

24th May 2021 -11am -**Developing Greenfield Sites Outside Settlement Boundaries**

Speakers: Jonathan Clay, Dr. Ashley Bowes and Rowan Clapp

7th June 2021 - 11am - **Compulsory Purchase: A fresh perspective**

Speakers: Paul Shadarevian QC, Harriet Townsend, Emmaline Lambert and Dr. Christina Lienen

21st June 2021 - 11am - **Planning Case Law Update**

Speakers: James Findlay QC, Ryan Kohli, Ruchi Parekh and John Fitzsimons

Please email events@cornerstonebarristers.com if you would like any more information.

Overview (1)



(1) Planning Act 2008: the basics

(2) NSIPs and quasi-NSIPs

(3) Local authority highway schemes

(4) Local authority regeneration schemes

(5) Local authorities as host authorities



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Planning Act 2008: the basics

NSIPs and DCOs: what's the difference?



- A Nationally Significant Infrastructure Project (NSIP) is the scheme of works, whether a new road, a wind farm, a power line, a rail link, or a freight interchange.
- There are also quasi-NSIPs (see later slide).
- A Development Consent Order (DCO) is the statutory instrument that authorises that scheme of works, and includes other powers as necessary (such as compulsory acquisition, traffic orders, deemed marine licence, etc).

What are National Policy Statements?



- The NPPF does not address NSIPs (see para 5)
- NSIPs are subject to National Policy Statements for the subject matter (e.g. Energy, Transport, Waste, Water)
- NPS are produced by the relevant SoS and subject to Parliamentary debate.
- Once published they stand until they are formally reviewed
- Where they apply they must be followed (with limited exceptions: see s.104 PA 2008).

A stream-lined and predictable process



- Application is made to the relevant SoS for the NSIP subject matter (BEIS, DfT, Defra, MHCLG)
- One stop shop approach
- Significant front-loading pre-application
- PINS has 28 days for acceptance: not a rubber stamp (Lower Thames Crossing)
- From acceptance to examination is limbo-land
- Six month examination (extensions rare)
- Three months report stage
- Three months decision stage

Largely a written process



- Participants get involved by making a Relevant Representation during the registration period
- The ExA sets firm deadlines and will be strict
- At an early deadline parties submit a Written Representation
- ‘Host’ local authorities submit a Local Impact Report
- The ExA asks rounds of Written Questions
- Hearings are limited, focused, and inquisitorial
- Cross-examination is exceptional not the norm

Attractive to promoters because...



- Predictable timescale
- The one stop shop option (though not everything, e.g. Sizewell C re nuclear site licence from the ONR outside the DCO process)
- Generally predictable outcomes (but not always!)
- High-calibre Examining Authorities so robust and good quality decisions
- So... lower risk of successful legal challenge (but not always!)



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NSIPs and quasi-NSIPs

NSIPs



- Schemes of works that can be put forward as NSIPs are defined by the PA 2008 and secondary legislation
- S.14 PA 2008 sets out the broad categories and the following sections in Part 3 set the detailed parameters and the SoS can add or remove matters to/from the categories or parameters
- The parameters can be size, capacity, or promotor focused (e.g. Highways England but not normally local highway authorities)

Quasi-NSIPs



- S.35 PA 2008 allows the SoS to direct that something that is not a NSIP can be a 'project of national significance' (PoNS??) if he thinks it should be and it is in a category in s.14 PA 2008 or it is business/commercial development (but not a residential scheme).
- Once there is a s.35 direction in place the project can only be authorised by a DCO and the procedure for securing that DCO is the same as for a NSIP.

Examples of quasi-NSIPs



- Norwich Northern Distributor Road (Norfolk CC)
- Great Yarmouth Third River Crossing (Norfolk CC)
- Lake Lothing Third Crossing (Suffolk CC)
- International Advanced Manufacturing Park (Sunderland CC): Part One had a s.35 direction in 2015 but then the SoS allowed it to 'convert' back to TCPA. Part Two is proceeding as a DCO
- London Resort (entertainment complex): DCO application accepted and now in limbo-land.



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Local Authority Highway Schemes

Highway Schemes



- NDR: 22 km dual carriageway linking the A47(T), Norwich International Airport, and strategic routes to north Norfolk, and supporting the growth of Greater Norwich.
- GY3RC: new lifting bridge allowing Great Yarmouth Port (a wind farm base) better access to the A47 and regenerating the town.
- LLTRC: lifting bridge bypassing a bottleneck on A47/A12 bascule bridge, with improved access for the Port of Lowestoft (wind farms) + regen.



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Local Authority Regeneration Schemes

Local Authority Regeneration Schemes



- IAMP: major development north of the Nissan plant at Sunderland, providing significant employment (c.4,700 direct new jobs plus indirect/supply chain benefits).
- GY3RC: a secondary role of this highway project was to regenerate a run-down quarter of the town.
- LLTRC: a secondary role of this highway project was to make the town more attractive to inward investment and regenerate the neglected south side of Lake Lothing.



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Local Authorities as 'host' authorities

Local Authorities as 'host' authorities



- S.56A PA 2008 identifies the local authorities who are 'host' authorities and will be invited to submit a Local Impact Report.
- Geographic basis looking at the land within the DCO application.
- Unitaries, counties, and districts can all be host authorities.
- NB: if mitigation works for the DCO are in a LA area it will be a host authority even if the main works are not (e.g. West Suffolk for Sizewell C).

Overview (2)



(6) Local authorities and adequacy of Consultation

(7) Local authorities and Local Impact Reports

(8) Participating in a DCO examination

(9) Local authorities and discharge of Requirements

(10) Questions



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Adequacy of Consultation

Adequacy of consultation



Pre-Application

Acceptance

Adequacy of consultation



Pre-Application Stage

Statement of Community Consultation:

- Must be consulted by Applicant on draft SoCC
- Must be given 28 days to comment
- Often an iterative process

LAs should consider:

- LAs Statement of Community Involvement
- Local circumstances/characteristics of community
- Digital exclusion
- Input from parish/community councils
- Proposed duration of consultation

Adequacy of consultation



Acceptance Stage

Adequacy of Consultation Representation:

- LAs invited to submit AoC representation after submission of application
- LA must respond within 14 days
- AoC must address compliance with:
 - Statutory duties re: consultation + publicity
 - Duty to consult LA about preparation of SoCC
 - Commitments in SoCC



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Local Impact Reports

Local Impact Reports



- Key document
 - ExA and Secretary of State must have regard to any LIRs submitted by deadline
 - LAs strongly encouraged to produce LIRs, whether positive or negative impacts
- Timetable
 - Post-acceptance; notice to LAs inviting LIR
 - ExA will set timetable at preliminary meeting, including deadline
 - Do not wait for the preliminary meeting/deadline!
 - Ensure internal authorisation process in place

Local Impact Reports



“a report in writing giving details of the likely impact of the proposed development on the authority’s area (or any part of that area)” : s.60(3)

- Site description
- Details of proposal
- Planning history
- Development plan policies
- Relevant development proposals
- Local characteristics
- Transport issues
- Site and area constraints
- Socio-economic issues
- Community matters
- Should contain statement of positive, neutral and negative local impact
- Can assess relative importance of different social, environmental or economic issues
- Should express any views on draft DCO (articles, requirements or obligations)



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Participation in DCO examination

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Written Process

Hearings

Participation in DCO examination



Written Process

- Local Impact Reports
- Statements of Common Ground
- Relevant Representations
- Commenting on others' written representations
- Responding to ExA's written questions
- Commenting on other documents (e.g. Construction or Environmental Management Plans)

Participation in DCO examination



Hearings

- Open floor hearings
- Compulsory acquisition hearings
- Issue specific hearings
 - DCO hearing particularly important



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Discharge of Requirements

Discharge of Requirements



- Discharge applications
 - Can also be resource intensive process
 - Time limits
 - Consultation
- Enforcement (Pt 8, PA 2008)
 - Prosecution
 - Rights of entry
 - Information notices
 - Notice of unauthorised development
 - Injunctions



Any Questions?

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