



Planning and Infrastructure update

There have been some important and interesting announcements over the past couple of months which highlight the Government's continued commitment to encouraging infrastructure projects. In line with the announcement in the Autumn Statement, the Government has published the Infrastructure Bill. This covers some significant areas which are intended to facilitate the growth of industry and make the country more economically competitive internationally.

The Bill includes proposed changes to the Nationally Significant Infrastructure Project (NSIP) regime - namely (i) relaxing the consultation requirements needed where a non-material change to a Development Consent Order is proposed and (ii) reducing the number of examiners required to make a recommendation to the Secretary of State. These changes are meant to make it quicker and simpler for a DCO to be altered without the need to go through extensive consultation on a point which is fundamentally a minor change to an already consented project. This is unlikely to go far enough for some reformers as the amendment process is still essentially a re-run of the application, however it is to be hoped that when faced with amendment applications the Examining Authority takes a proportionate approach to the examination. Previously, the number of planning inspectors on a panel had to be an odd number because it was the Planning Inspectorate who, independently, took the decision about whether or not to grant the DCO. The SoS now makes the final decision and the Planning Inspectorate makes a recommendation to the SoS to inform his decision. As such, there is no reason to have an odd number of inspectors, which can be beneficial in terms of logistics and fees (especially as a developer has to pay a fee and a subsequent daily rate for each inspector).

In addition to these changes there are provisions which allow for the Highways Agency to become a government owned company, which will facilitate the separation of the Agency from the Department for Transport and make it easier for the Highways Agency to promote schemes in a similar way to which a private developer can. The Bill also proposes to introduce a community right to buy into renewable energy schemes giving

a local community more influence and involvement with the scheme and to allow for the sale of publicly owned land to the Homes and Communities Agency with the resultant effect that any subsequent purchaser of the land can develop it free from another's rights over that land. This last point has caused a degree of controversy and it will be interesting to see if it survives scrutiny in the House of Commons.

East Anglia

There has not been much movement on the NSIP front with many of the projects currently in the pipeline going through the examination process. However, on 16 June, the Secretary of State for Energy and Climate Change granted development consent for the first project within the East Anglia offshore wind zone (there are likely to be 3 further projects brought forward to deliver the zone's potential 7200MW generating capacity). The application was made for up to 325 wind turbines located approximately 43km off the Suffolk Coast with an installed generating capacity of up to 1200 MW. In addition to the offshore wind turbines and substation platforms the development also includes 80km of underground electrical cabling (43km offshore and 37km onshore) and an electrical converter station.

The application also sought to include cable ducting for the next projects, on the basis that such works could properly be considered "associated development" in accordance with the guidance from CLG¹. Whilst the inclusion of the works within the DCO was not particularly contentious, compulsory acquisition rights were also sought which raised a question as to whether the extent of the rights being sought were the minimum necessary to deliver the project.

The Examining Panel considered this issue and was convinced that with the applications for the next projects already being in preparation, with likely submission dates in 2015, there was a reasonable prospect that the works would be required and as such the compulsory acquisition tests were met.

The other interesting points from this decision are:

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/192681/Planning_Act_2008_-_Guidance_on_associated_development_applications_for_major_infrastructure_projects.pdf

- that it is not necessary under the Planning Act process for a s106 planning obligation to be completed before the close of the examination. A s106 agreement was completed after the close of the examination and the submission of the Panel's report. This indicates that the approach to issuing a DCO is more akin to that for a planning permission than an inspector's decision at appeal in that it can be conditional upon a S106 being completed before consent is granted and the obligation does not need to be in place before the panel makes its recommendation; and
- in reaching his decision the SoS may have regard to material submitted after the close of the examination, which may lead him to reach a different conclusion to the Panel. At a late stage in the examination the Applicant indicated that it could reduce the number of turbines proposed (from 325 to 240), and thereby reduce the potential impacts on European Protected birds. The Panel placed little weight on this and recommended that, because of the urgent need set out in National Policy Statement EN1 for new renewable energy capacity, the reduction was not justified. The SoS took a different view and imposed its own compromise solution whereby the number of turbines was reduced, but the overall capacity maintained by a requirement that the turbines should be 5MW or above unless otherwise agreed.

HS2

Finally, the High Speed 2 Select Committee announced its scheduling and programming intentions on 12 June. The substantial hearings will begin in September with the SC deciding to begin hearing petitioners on a geographical basis (starting at Birmingham, moving north and then moving south towards London). However, before then, HS2 Ltd will kick things off on 1 July with preliminary hearings before the summer recess focusing on an introduction to the scheme and challenges to the standing of some of the petitioners. The

list of those who are to be challenged (on the basis that they do not have a sufficient interest which will be affected by the scheme e.g. Stop HS2, who continue to maintain an objection to the principle of the Bill) has been published on the SC's website. The current timetable states that the Committee will sit for three days a week during September. Considering there are just under 2,000 petitioners, it is likely that the SC will may take some time to get through everyone. HS2 Ltd will be working hard in the background to get petitioners to accept undertakings and withdraw their petitions so that the SC's time is not eaten into.

The additional announcement made by George Osborne that a £7 billion investment to create a High Speed 3 line between Manchester and Leeds has received a mixed response, however, further connectivity will certainly be welcome by business, though as no new lines are proposed, capacity may remain an issue.

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