The NSIP Regime after 10 Years – Looking Back and Looking Forward

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Looking back…

- Aims and objectives
- Tweaks to PA 2008
- Guidance and advice
- Hiccups
- Case studies
- Challenges/refusals
- Perspectives
Looking forward…

- AD makes it to Wales
- An element of housing – overview
- PD rights?
- Role of the NIC
- Housing – a missed opportunity?
Aims and objectives

- Royal Assent – 26 November 2008
- Single planning and authorisation scheme for infrastructure projects based on
  - Policy and need
  - Compulsory pre-app consultation
  - Examination, principally in writing
  - Fixed timetables for examination/decision making
  - Decision (then) by an independent IPC
Policy - NPSs

12 designated NPSs
- Energy (6) – DECC/BEIS (all 19 July 2011)
- Transport (3) – DfT – including Airports Consultation
- Water, waste water and waste (3) – DEFRA
- Tidal lagoons?
- Radioactive waste?
Pre-application consultation

• Alerts interested parties early on
• Varied level of IP engagement?
• Are IPs leaving things until post-application?
• Should less weight be attached to points made later?
Written examinations and limited hearings

• Vast amount of documentation for all to see
• Hinkley – nearly 2,300 docs: Navitus Bay – over 2,000 docs: Thames Tideway Tunnel – over 2,500 docs
• Can IPs find their way round an examination?
• Advance warnings of hearing topics (and time to prepare answers)?
• Little xx: but parties do ask each other questions
Fixed timescales

• Ministerial decision stage now reinstated: extra three months (IPC abolished)
• Few examinations last more than 6 months
• Two extension requests – both refused
• A problem for some larger projects eg Thames Tideway
• Confidence to promoters etc on decision timing
• Compare Hinkley C (505 days) to Sizewell B (2,232 days)
Tweaks to the Planning Act 2008

- Localism Act 2011 – abolishing the IPC
- Growth & Infrastructure Act 2013 – extending the regime to 10 types of business and commercial projects
- Infrastructure Act 2015 – timing of appointment of the ExA; two person panels; changes to and revocation of DCOs
- Housing & Planning Act 2016 – an "element of housing" as part of the DCO development
- Secondary legislation
Guidance and advice

- DCLG Guidance (9) - now in second iteration
- PINS advice notes (17) – some in multiple iterations
- Consents service unit – coordinating consents before and during examination
- MIEU – Major Infrastructure and Environment Unit – assisting project promoters on habitats issues
Some hiccups

- Special parliamentary procedure (when certain types of land to be CA'd and landowner objects)
- Flexibility – tension between need to change the project and interested parties wanting certainty
- Post-application changes – difficulty and delay in making changes post-application and post-consent
Some case study topics

- Alternative options
- Time for correction/change orders
- Redetermination after challenge to refusal
- Use of PA requests
- Amending by planning application
JR challenges and refusals

- Unsuccessful challenges on Heysham – M6 link road, Hinkley C, Rookery South
- Successful challenge on Preesall, then redetermination
- 17 challenges overall – decision to refuse (2), decision to grant (11), section 53 access for surveys (2), costs decision (1) and designation of an NPS (1)
Some refusals

- Navitus Bay OWF (visual impact)
- East Midlands Gateway (insufficiently rail connected)
- White Rose Power Station and Yorks and Humber CCS project (no funding for CCS projects)
- Mynydd y Gwynt WF (adverse effect on adjoining SPA)
Perspectives looking back

• Covers a range of projects – reps varying from 5 to 10,000
• All treated the same way – squashed in or spread out across the same timescales
• Most projects have succeeded; some withdrawn; some challenged, but most not
• The one stop shop is with us – up to a point
• Difficulties/unknowns still with the change process; the time involved in JR challenges; and potentially, implementability
Some perspectives looking forward…

AD has made it to Wales
- AD previously taken out of Welsh DCOs: Hirwaun PS; Swansea Tidal Lagoon
- AD now added into the regime for electricity generation projects and electric lines (but not other Welsh projects)
- Some projects have now come out of the PA 2008; some thresholds changed
- New regime for "developments of national significance" since March 2016 (sitting below PA 2008 projects)
"Related housing development" – what does it mean?

Section 115(4B)(a) – "development which…consists of, or includes, the construction or extension of one or more dwellings"

- Development ancillary to housing

Section 115(4B)(b) – "is on the same site as, or is next to or close to, any part of the [NSIP] or is otherwise associated with that development (or any part of it)"

- Geographical proximity, or
- Functional association
Does the DCLG Guidance help?

- Need or promoter choice? [11] [19] [28] [37]
- How to justify need for permanent accommodation for workers [28] [37]
- Examining the proposal in its own right [9] [27]; acceptability in planning terms [41]
- NPPF and supporting planning guidance [29, 21-22]: LIR [31]
- Geographical proximity [24]; restriction on certain locations [21-22]; maximum numbers [16]
Prospects for larger housing schemes as DCOs?

- Guidance para 16: 500 dwelling limit to avoid undermining the local planning process
- Guidance paras 30-31: "policies in the development plan likely to be an important and relevant consideration for the SooS when deciding whether to grant consent for the housing element of the scheme …open to ExA to request any information from a LA that they consider necessary (for example in relation to the impacts on local housing markets and supply)"
National needs assessment – a vision for UK infrastructure

- To provide the NIC with a blueprint for its own National Infrastructure Assessment (NIA)
- Recommendation 1 on housing
- "Major housing proposals (approximately 5,000 units or more) should be considered as part of the NSIP regime. If approved under this regime, individual housing proposals would have in principle Government support and housing developers could then develop them in detail in partnership with local authorities and other organisations, and in combination with the required on and off site infrastructure."
Joined up planning

- Cambridge – Milton Keynes – Oxford corridor: NIC interim report
  "without a joined up plan for housing, jobs and infrastructure across the corridor, it will be left behind by its international competitors."
- Crossrail 2
  Potential to deliver 200,000 homes: needs a planning and delivery vehicle.
Thank you