

Planning & Development Newsletter

Planning Bill 2008 – overview

The Planning Bill 2008 is currently being debated by the House of Commons. It is a major reform of planning law.

Major Infrastructure Projects

This major piece of new legislation introduces a new system for approving planning permission for major items of infrastructure of national significance.

This is an attempt to streamline the decision making process, and avoid the need for complex, expensive, and time consuming public inquiries such as the one for Heathrow Terminal 5.

Qualifying infrastructure is likely to include the following:

- Power stations and gas storage facilities
- Highways
- Airports
- Harbours
- Railways
- Dams and reservoirs
- Waste water treatment plants

The intention is to exempt these developments from the normal requirement of planning permission under the 1990 Town and Country Planning Act. Instead, a newly formed Infrastructure Planning Commission will consider proposals for the development of major infrastructure, and assess whether "Development Consent" should be issued, permitting the development. National policy statements will set out the framework for decisions by the Commission.

Development control

The Bill also proposes various alterations to the existing development control regime. New schemes of delegation are being proposed, with greater powers being given to Planning Officers to determine applications. Appeals will in some instances be made to Members of the Authority itself rather than to the Secretary of State.

The Community Infrastructure Levy

The Planning Bill 2008 provides a framework for The Community Infrastructure Levy (CIL). This will



impact on all developers. Further detail will be embodied in future regulations as the Bill progresses through the House of Commons.

An explanatory document was published in January 2008. The purpose of the CIL is to ensure that costs incurred in providing infrastructure to support and sustain new development will be met, either in part or whole, by the landowners who will have seen the value of their land increase as a result of the grant of planning permission.

The CIL will be a standard charge covering most types of development, including both residential and commercial. The charge will be decided by designated charging authorities calculated either by reference to fixed amounts or by reference to increases in land values, arising from the grant of planning permission.

The CIL is not designed to be used for general Local Authority expenditure. Rather it will only be applied to the funding of new and existing infrastructure. The majority of the CIL is expected to be spent on transport. However, the CIL is also expected to support social and environmental infrastructure, particularly local facilities that are important to maintaining and

improving quality of life, such as parks, sports facilities and health centres.

The existing legislation within section 106 of the Town and Country Planning Act 1990 will be retained as the legal underpinning for negotiated agreements between developers and local planning authorities. The CIL is intended to compliment and work alongside the traditional Section 106 Agreement. Section 106 Agreements will continue to deal with affordable housing, as well as non-financial, technical or operational matters.

The timetable for the introduction of the CIL is that detailed regulations will be available in Autumn 2008 for comments, and the CIL may then come in early 2009. Transitional arrangements are promised.

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Judicial review of planning decisions

Since there is no third party right to appeal, we are often asked to advise aggrieved parties on the merits of applying to the Court to judicially review grants of planning permission.

The process is as follows:

- We would undertake a detailed examination of the facts to establish whether or not the claim is worth pursuing. This **must** be done as soon as possible;
- If we consider the claim is worth pursuing then we would seek specialist Planning Counsel's advice on the likely success of Court action;
- If this is positive, then the Applicant has to seek the leave or permission of the Court to bring the claim. The claim **must** be made as soon as possible following issue of the Decision Notice and in any event no later than three months afterwards;
- If leave is granted then the matter proceeds to a full hearing.

Clearly, this is a complicated and time consuming process, and the major hurdle to many potential Applicants is payment of legal costs, not just their own, but potentially the Authority's



should the claim fail. In the recent case of **Residents Against Waste Site Ltd. v Lancashire County Council and Global Renewables Ltd.** a group of residents wished to challenge the decision of Lancashire County Council to grant permission for a waste technology plant. In an attempt to limit their liability to pay costs, they formed a limited liability company to act as the Applicant. The Authority argued that the Company as a legal entity did not have sufficient interest in the matter and therefore should not have leave to bring the claim,

as it had not been in existence during the application process. It was held that although the Company had been formed to limit costs liability, adequate provision for the payment of costs had been made, and that issue had nothing to do with the Company's standing in the case. The Company was granted leave to proceed with the claims.

Information

If you have any queries on any issues raised in this Newsletter, or any planning or development matters in general please contact: Mark Dixon on +44 (0) 1482 337286

This newsletter is for the use of clients and will be supplied to others on request. It is for general guidance only. It provides useful information in a concise form. Action should not be taken without obtaining specific advice. We hope you have found this bulletin useful. If, however, you do not wish to receive further mailings from us, please write to Pat Coyle, Rollits, Wilberforce Court, High Street, Hull HU1 1YJ.

The law is stated as at 18 April 2008.

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Planning expertise

Mark Dixon and John Downing have a wealth of experience in advising landowners and developers on all aspects of planning law and policy. Assisted by David Myers, the team's ability is recognised in two leading law directories The Legal 500 and Chambers and Partners. In fact in the recent edition of Chambers Mark was commended for his "excellent planning expertise".

From initial land appraisals, advice on the development control system through to conducting planning appeals and advising on enforcement action and CPOs, the team caters for the needs of regional and national house builders, public authorities, and private landowners.

