

# Planning and major infrastructure

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## How should decisions on major infrastructure projects be made?

There is general agreement that the UK will need major infrastructure investments over the next few years, especially in energy and transport. These range from high speed rail to major renewable energy plants. The Labour Government accepted a widespread business view that the traditional system of deciding whether to grant consent was unsatisfactory. The new system introduced in the Planning Act has, however, been widely criticised.

### THE TRADITIONAL SYSTEM

Prior to Labour's reforms, the following process was used:

- Consents were often required under two or three pieces of legislation for a single project
- A public inquiry with cross examination of witnesses, as well as written evidence
- A planning inspector sent the Secretary of State a summary of the evidence, along with a recommendation
- The Secretary of State took the final decision, and did not have to accept the recommendation, provided that he gave good reasons

### The old system was seen as too slow for major infrastructure projects of national importance

There were several major criticisms of this process. Public inquiries became very long, lasting several years in controversial cases, despite attempts to improve the procedures.

The Secretary of State could reject the inspector's recommendation, without necessarily having studied the issues very closely. Furthermore, a Secretary of State's decision under one piece of legislation for part of a project might not remove the need for planning consent from the local planning authority.

### THE PLANNING ACT

The Planning Act 2008 changed the position completely:

- Major infrastructure projects of national importance required just one type of consent, "development consent", removing the need for consent under several different pieces of legislation
- This consent would be granted by a new body, the Infrastructure Planning Commission (IPC), which would consider the evidence and take the final decision
- Evidence would be considered in writing, unless the IPC chose to have an oral session. There would be no public inquiry of the traditional type
- The Secretary of State would have no role in the individual decision, and no opportunity to overturn the decision of the IPC
- The IPC would take its decisions mainly on the basis of the relevant National Policy Statement (NPS)
- These NPSs would be published in draft, open to public consultation and to consideration by Select Committees, before approval by the Secretary of State
- Before the relevant NPS has been

designated by the Secretary of State, the IPC can still consider the evidence, but the Secretary of State will take the final decision

Several NPSs were published in draft late in 2009, and have been scrutinised by Select Committees that reported in March 2010. Though the IPC has been open to receive applications since 1 March 2010, the NPSs are still to be designated by Government. Consequently, the IPC would currently be able to hear evidence, but not to decide an application. Instead, the panel of members appointed by the IPC would send the Secretary of State their findings and conclusions, and a recommendation whether or not to approve the application.

### CRITICISMS OF THE PLANNING ACT 2008

Some critics of the new process contend that it may be considered undemocratic because the decision is not taken by an elected politician. The streamlined process may leave objectors with less chance to challenge arguments in favour of controversial proposals, such as nuclear power stations. Decisions might also be liable to challenge by judicial review, potentially causing considerable delays even if the challenges were unsuccessful.

### CONSERVATIVE PROPOSALS

The Conservatives' proposals can be summarised as follows:

- To abolish the IPC, although there might be a centre of major infrastructure expertise within the Planning Inspectorate
- To retain "development consent" as the sole legal requirement

- To retain public inquiries, using existing procedures to prevent undue delays. Current procedures include the possibility of appointing more than one planning inspector and holding hearings on different aspects of the project at the same time
- To leave the final decision with the Secretary of State

The Liberal Democrats also criticised the 2008 Act, but did not commit to abolishing the IPC.

### Critics of the Planning Act say the new process is undemocratic and provides little opportunity for objection

### THE CURRENT POSITION

Future developments will depend upon decisions by the new Government. If they disagree with the policies on which the NPSs have been prepared, they could revise them. Radical changes would probably mean going through the scrutiny process again, though that would probably be preferable to leaving the draft NPSs unapproved and relying upon the Secretary of State to overturn unwelcome recommendations made by the IPC. Abolishing the IPC would require primary legislation.

Whatever decision is taken on the legislation, the issue of new infrastructure consents is likely to be a major one for the new Parliament. Business will want decisions taken without much delay; objectors will want their views taken into account and the public will demand modern infrastructure.