Landmark CHAMBERS

# The Growth and Infrastructure Act: Projects, Special Parliamentary Procedure and Variations

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**October 2013**

# Agenda: GIA Part 2
# "Other Infrastructure Provision

- Bringing business and commercial projects within the Planning Act 2008 regime

- Special Parliamentary Procedure

- Electricity Act Consents

# Common themes?

- Putting right the way in which the 2008 Act regime interacts (or doesn't) with other provisions and procedures.

- Attempting to speed up the process of approving projects which the Government believe are important.

# Bringing Business and Commercial Projects within the Planning Act 2008 (1)

The 2008 Act:

- For nationally significant infrastructure projects"

- Single "development consent order", bringing together various consents for which separate application would previously have been necessary

- Originally to be dealt with by the Infrastructure Planning Commission, with "seamless transition" to a new National Infrastructure Directorate within the Planning Inspectorate

# Bringing Business and Commercial Projects within the Planning Act 2008 (2)

NSIPs - the original list (s.14)

- Energy
- Transport
- Water
- Waste water
- Waste treatment

# Bringing Business and Commercial Projects within the Planning Act 2008 (3)

NSIPs within the 2008 Act:

- **s.14(3)-(7):** Secretary of State may by order ad to or alter the list of projects that are required to go through the NSIP procedure

- **s.35**: Secretary of State may also make a direction that a specific application or proposed application be treated as development requiring a DCO, provided he thinks it is of national significance

- BUT only for projects in the fields of energy, transport, water, waste water or waste treatment

# Bringing Business and Commercial Projects within the Planning Act 2008 (4)

**The GIA amendments:**

- No change to s.14 projects that are required to obtain DCO

- But projects where SoS can make s.35 direction are widened to include **s. 35(2)(c)(ii)**:

> "a business or commercial project (or proposed project) of a prescribed description"

# Bringing Business and Commercial Projects within the Planning Act 2008 (5)

## Restrictions on the power

The SoS still has to think that the project is of national significance [substitute s.35(2)(c)] and he cannot make a direction in relation to a project in this new category:

- Which includes the construction of one or more dwellings [substitute s.35(5)]
- Without the consent of the Mayor if all or part of the development is in Greater London [substitute s.35(4)]
- Unless a request has been made by the applicant or prospective applicant [new s.35ZA(2)]

# Bringing Business and Commercial Projects within the Planning Act 2008 (6)

**Limits on the power**

- England only
- The SoS must think that the project is of national significance
- He cannot make a direction in relation to a project in this new category:
  - Which includes the construction of one or more dwellings: s.35(5)
  - Without the consent of the Mayor if all or part of the development is in Greater London: s.35(4)
  - Unless a "qualifying request" has been made by the applicant or prospective applicant (s.35ZA(2))

# Bringing Business and Commercial Projects within the Planning Act 2008 (7)

**The purpose of the reforms:**

2011-2012:

- LPAs dealt with 320 large-scale commercial and industrial applications, of which 41 took over a year to determine

- Number of large-scale applications dealt with in 13 weeks fell from 68% to 47%

# Bringing Business and Commercial Projects within the Planning Act 2008 (8)

"Because of the importance the Government places on supporting growth through an efficient and effective planning system, the Government wants to provide an alternative planning route for schemes of national significance, with streamlined processes and a clear statutory timetable."

"A small number of large, complex projects which call for expertise in a particular area can be a severe drain on a local planning authority's planning resources, which is difficult to plan for if the local authority is small and the projects are atypical"

(Nov 2012 Consultation)

# Bringing Business and Commercial Projects within the Planning Act 2008 (9)

## What sorts of development are likely to be prescribed?

- **November 2012 Consultation:**
  - Offices and research }
  - Manufacturing/processing } over 40,000sqm GIA
  - Warehousing/storage and distribution}
  - Conference centres }
  - Leisure, tourism and recreation over 100 ha or sports stadia with 40,000+ seating capacity
  - All deep mined coal; onshore gas and oil extraction; minerals over 100 ha
  - Mixed development over 100,000sqm, except where includes housing or retail = main use

# Bringing Business and Commercial Projects within the Planning Act 2008 (10)

**November 2012 Consultation: definition of "nationally significant"**

- Physical scale
- Possible impacts (esp. if beyond the locality)
- Location and whether it gives rise to substantial cross-boundary or national controversy
- Potential economic impact
- For minerals: the rarity and importance of the mineral
- Whether issues of national security involved

# Bringing Business and Commercial Projects within the Planning Act 2008 (11)

**Consultation response**

- 41% agreed with the list;  54% concerned
  - Particular concern about inclusion of coal and shale gas
  - Small number suggested should extend list to include housing, motorway service areas

- 38% supported thresholds;  44% did not
  - some said too low in London – would cover “routine” development
  - Need for simpler process of deciding what was nationally significant

- 41% agreed with factors for judging significance, 35% did not

# Bringing Business and Commercial Projects within the Planning Act 2008 (12)

**The Response to Consultation (June 2013)**

The following broad descriptions of development should be allowed to use the NSIP regime:

- Offices and r&d
- Manufacturing and processing
- Warehousing etc
- Conference and exhibition centres
- Leisure, tourism sports and recreation
- Aggregate and industrial minerals, but not new coal, oil and gas (subject to review)
- No statutory thresholds, but will publish a policy document with indicative factors
- Housing to remain the responsibility of local authorities

# Special Parliamentary Procedure

**Currently: CPO may require SPP**

- where National Trust land is to be compulsorily acquired and the National Trust object
- 2008 Act: ss. 128 and 129 -a DCO must be subject to SPP if:
  - it authorises the compulsory acquisition of land belonging to a local authority or land acquired by a statutory undertaker for the purposes of their undertaking
  - the local authority or statutory undertaker has objected and the objection is not withdrawn.
- s. 131, 132: SPP may be required for acquisition of common, public open space, or allotments (mirroring s. 19 ALA 1981)

# Special Parliamentary Procedure
# The Problem (1)

- complex procedure which may involve Petitions being presented and considered by a Joint Committee; can result in the Order being rejected by Parliament

- Joint Committee's remit not limited to the issue which caused it to be referred:  can reconsider the whole order

# Special Parliamentary Procedure
# The Problem (2)

**Rookery South**

- application to the IPC in August 2010
- decision to grant the DCO (subject to SPP) October 2011
- laid before Parliament November 2011
- 39 petitions, many not concerned with the triggering issue
- reduced to 3, specifically relating to triggering issue
- JC Special Report published February 2013

# Special Parliamentary Procedure
# The Problem (3)

## Rookery South JC Special Report

> " … it would seem rather inconsistent if Parliament were to conduct a full re-hearing of the issues in respect of *some* Development Consent Orders, given that *all* DCOs, including those subject to Special Parliamentary Procedure, are subject to appeal by judicial review. However, as explained above, the provisions of the 1945 Act apply to the Order as a whole, and since the 2008 Act did not amend the 1945 Act, we now have a statutory framework which is internally contradictory."

- Recommended that no more DCOs be laid before parliament until the statutory framework had been amended

# Special Parliamentary Procedure: The GIA answer … (1)

- ss.128 and 129 of the 2008 Act repealed
- s.131/132 amended: SPP not required for open space where the SS certifies that
  - **subs (4A)**— either there is no suitable land available to be given in exchange for the order land, **or** any suitable land available to be given in exchange is available only at prohibitive cost, **and** it is strongly in the public interest for the development for which the order grants consent to be capable of being begun sooner than is likely to be possible if the order were to be subject (to any extent) to special parliamentary procedure.
  - **subs (4B)** "the order land is being acquired for a temporary (although possibly long-lived) purpose."

# Special Parliamentary Procedure
# The GIA answer … (2)

**Statutory Orders (Special Procedure Act) 1945 amended:**

- Where SPP required because of acquisition of National trust land or commons, open space or allotment, the SPP procedure will only consider that aspect of the order which triggered the need for SPP

- Amendment covers all CPO powers (not only those under a DCO)

# Electricity Act Consents (1): The Old Law (Electricity Act 1989)

- S.36: a generating station shall not be constructed extended or operated except in accordance with a consent granted by the Secretary of State.
- S.37: an electric line shall not be installed or kept installed above ground except in accordance with a consent granted by the Secretary of State.
- S.90(2) T&CPA 1990: on granting consent under section 36 or 37 in respect of any operation or change of use that constitutes development, the Secretary of State may direct that planning permission for that development and any ancillary development shall be deemed to be granted, subject to [such conditions as may be specified]

# Electricity Act Consents (1): The Problem …

- Post 2008 Act, the construction or extension of generating stations of greater than 50 megawatts and power lines of 132 kilovolts or more require a DCO and do not need a s.36 or s.37 consent
- But there is no specified procedure for varying a s.36 consent. Any application for a varied s.36 consent which involves construction or extension of a generating station of more than 50 megawatts is caught by the provisions of the 2008 Act and requires a DCO.
- There is no provision in the 2008 Act for the variation of an existing s.36 consent, so the applicant is faced with going through the full DCO process.

# Electricity Act Consents (1): The Solution … (1)

## New section 36C

"(1) The person for the time being entitled to the benefit of a section 36 consent may make an application to the appropriate authority for the consent to be varied."

"(4) On an application for a section 36 consent to be varied, the appropriate authority may make such variations to the consent as appear to the authority to be appropriate, having regard (in particular) to—

(a) the applicant's reasons for seeking the variation;

(b) the variations proposed;

(c) any objections made to the proposed variations, the views of consultees and the outcome of any public inquiry"

# Electricity Act Consents (1): The Solution … (2)

**Section 90 TCPA amended:**

- New subs(2): on varying a s.36 or s.37 consent SoS may direct that planning permission be deemed to be granted for:
  - (a) so much of the operation or change of use to which the consent relates as constitutes development;
  - (b) any development ancillary to the operation or change of use to which the consent relates.
- New subs (2ZA): on varying a s.36 or s.37 to SoS may direct that an existing deemed permission (or the conditions attached to it) be varied, or that other consents, agreements and approvals relating to the existing permission are carried over

# GIA:  The Result?