

# A PRACTICAL INTRODUCTION TO THE 2008 ACT PROCESS

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## THE DCO PROCESS: RATIONALE

Planning for a Sustainable Future, May 2007, at para.1.20

***“The process for dealing with major infrastructure projects, from submission of the proposal to decision in particular, is too slow and complicated. It took seven years to get to a decision on Heathrow Terminal 5; more than six years to get to a decision on the North Yorkshire Power Line upgrade; nearly four years to get to a decision on Dibden Bay container terminal; and two and a half years to reach a decision on Staythorpe C gas-fired power station. Prolonged procedures of this sort rarely result in better decision making but they do impose high costs, not only on promoters but also on other participants in the process. Delays can also result in years of blight for individuals and communities during which people are unable to move house or receive compensation. And they can put at risk the country’s economic and environmental well-being if, as a consequence, good development is delayed or investment and jobs go overseas rather than wait for modern infrastructure that is needed to support efficient business logistics.”***

## OVERVIEW OF THE PROCESS

- Six key stages
  - 1) Pre-application
  - 2) Acceptance
  - 3) Pre-examination
  - 4) Examination
  - 5) Decision
  - 6) Post-decision

## OVERVIEW OF THE PROCESS

- Six key stages

1) Pre-application

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### Specific time frames

**w/n 28 days**

**w/n 6 months**

**Recommendation w/n 3 months;  
Decision w/n a further 3 months**

**TOTAL: roughly 15 months**



**IF WE SLOW DOWN.... THIS  
NATIONALLY SIGNIFICANT  
INFRASTRUCTURE PROJECT  
MAY NEVER GET BUILT**

## (1) PRE-APPLICATION PROCESS

- Requirements for an application set out in s.37(3) of the Planning Act 2008:

*(3) An application ... must ..*

*(a) specify the development to which it relates,*

*(b) be **made in the prescribed form,***

*(c) be **accompanied by the consultation report,** and*

*(d) be **accompanied by documents and information of a prescribed description.***

*(...)*

*(7) In subsection (3)(c) “the consultation report” means a report giving details of—*

*(a) **what has been done in compliance with sections 42, 47 and 48** in relation to a proposed application that has become the application,*

*(b) **any relevant responses,** and*

*(c) **the account taken of any relevant responses.***

## (1) PRE-APPLICATION PROCESS

- *The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009*
- *Nationally significant infrastructure projects – Application form guidance (DCLG)*
- *Planning Act 2008: Guidance on the pre-application process (DCLG)*
- PINS Advice Note 6: How to submit your application (Feb 2016)
- PINS Advice Note 13: Preparation of a draft Development Consent Order and Explanatory Memorandum (Feb 2019)
- PINS Advice Note 14: Compiling the consultation report (April 2012)
- PINS Advice Note 15: Drafting Development Consent Orders (July 2018)

## (1) PRE-APPLICATION PROCESS

- **Prescribed form.** Application form: Sch.2 to 2009 Regs
  - Applicant to provide:
    - Brief explanation of why application falls within DCO regime
    - Non-technical summary of development proposal and of location/route of development
  - *Application form guidance* (DCLG)

## (1) PRE-APPLICATION PROCESS

- **Documents and information of prescribed description.**
  - Set out in Reg 5(2), 2009 Regs (inter alia):
    - ES/any scoping or screening opinions and directions where applicable
    - Draft proposed order & explanatory memorandum
    - Copy of any flood risk assessment
    - Statement of reasons re why compulsory acquisition necessary
    - Land plan identifying land required for or proposed by development
    - Plan identifying habitats of protected species, important habitats, water bodies in a river basin management plan, statutory or non-statutory sites together with assessment of effects
    - (.....)

## (1) PRE-APPLICATION PROCESS

- **Documents and information of prescribed description.**
  - Matters in relation to particular types of projects specified in Reg 6 of the 2009 Regs.
  - National Policy Statements for particular types of infrastructure may also require applicants to supply other specified information
  - PINS Advice Note 6 sets out order and format of documents
- SS has discretion to refuse to accept application if the form and content not satisfactory in some way: s.55(3)(f) and (5A)

## (1) PRE-APPLICATION PROCESS

- **Consultation report.**
- **(i) Statement of Community Consultation (SOCC)** Before consultation, applicant must prepare a statement *“setting out how the applicant proposed to consult, about the proposed application, people living in the vicinity of the land”*: s.47(1) –
- Before preparing SOCC applicant must consult local authority/ies:
- Typical contents of a SOCC:
  - Details of project: scale, positive and negative impacts;
  - How consultation will be carried out
  - Must contain a statement as to whether development is EIA development and, if so, details of publicisation and consultation of preliminary EI
- Once prepared, applicant must publicise SOCC and carry out consultation in accordance with SOCC proposals: s.47(7)

## (1) PRE-APPLICATION PROCESS

- **(ii) Consultation**
- **(a) Categories of persons who must be consulted: s.42(1)**
  - Prescribed persons: e.g. Welsh Ministers, Scottish Executive, statutory bodies, parish councils
  - Marine Management Organisation in case of certain apps
  - Host or neighbouring local authorities
  - Greater London Authority if land is within Greater London
  - Persons with an interest in the land: s.44
- **(b) Timetable: must allow at least 28 days for consultation**

## (1) PRE-APPLICATION PROCESS

- **(iii) Publicity requirements**
- Reg 4, 2009 Regs sets out manner in which an applicant must publicise a proposed application
- Notice published (inter alia) for at least two successive weeks in local newspaper, once in a national newspaper, once in London Gazette/Edinburgh Gazette
- Two successive weeks = once a week for two successive weeks
- Notice must include specified information, including deadline for response which is **not less than 28 days** following date of last notice
- Publication should coincide approximately with consultation, but may not always be possible: see DCLG pre-application guidance, para.58

## (1) PRE-APPLICATION PROCESS

- **(iv) The account taken of any relevant responses.**
- S.49(2): *“The applicant must, when deciding whether the application that the applicant is actually to make should be in the same terms as the proposed application, have regard to any relevant responses.”*
- Relevant responses = responses received to consultation and deadline before deadlines
- Compliance must be demonstrated to satisfaction of SS at stage of acceptance: s.55(3)(e)
- Before an application is accepted for examination, ExA will contact relevant local authorities to ask for their views on adequacy of consultation carried out in accordance with SOCC

## (1) PRE-APPLICATION PROCESS: comments

- Front-loading: reflects rationale that extensive pre-application procedure → shorter and more efficient examination process
- Only stage where applicant is in control of timeframes

## (2) ACCEPTANCE

- After formal submission, PINS must decide **within 28 days** whether all relevant documentation has been submitted to allow application to proceed
- SS may only accept application if satisfied that:
  - Application is for order granted development consent
  - Development consent is required
  - Applicant has complied with pre-application procedure
  - Application & accompanying documentation is of a standard SS considers satisfactory
- If accepted:
  - Documents are published on PINS website
  - Pre-examination stage commences

### (3) PRE-EXAMINATION

- Applicant must publicise that the application has been accepted by PINS and indicate when and how parties can get involve in Examination as interested parties: s.56(2), 2009 Regs, Sch.1 and Reg 8, providing a deadline of not less than 28 days
- Examining Authority – inspector or panel of inspectors (up to 5) within 21 days, must make an initial assessment of the principal issues
- Preliminary meeting: procedural issues and timetable for examination; all IPs notified
- Written note and audio recording of prelim meeting is made by PINS and published on PINS website
- Close of preliminary meeting = end of pre-application stage

## (4) EXAMINATION

- *Infrastructure Planning (Examination Procedure) Rules 2010*
- Guidance for the examination of applications for development consent (DCLG) (Mar 2015)
- Must be completed within 6 months: s.98
- Primarily through written representations: see s.90(1)



## (4) EXAMINATION

- Hearings can also be held – usually more inquisitorial
- Provision for Issue Specific Hearings in order to ensure adequate examination of a particular issue or ensure that an IP has a fair chance to put their case
- Each IP entitled to make oral representations – open floor hearings: s.93
- Compulsory acquisition hearings must be held where compulsory acquisition powers are included within draft order and affected person notifies SS it wishes for a hearing to be held: s.92

## (5) RECOMMENDATION AND DECISION

- During this stage ExA has 3 months to write its recommendation and submit it to relevant SS: s.98(3); power to extend this time limit under s.98(4)
- SS makes final decision – w/n 3 months
- ....SS does have power to extend time limits for recommendation and final decision provided he notifies interested parties of his decision, publishes the new deadline and announces the new deadline to the Houses of Parliament: s.98(3) and 107(3)
- In practice, extensions infrequent

## (6) POST DECISION

- 6-week window for legal challenge

## KEY POINTS

- Front-loaded procedure with focus on working out as much as possible in advance
- Pre-application stage is key and only stage where applicant is control of timeframe
- Procedural requirements really matter: format of application, consultation and notification requirements
- In examination, focus on written representations rather than oral hearing
- Robust timeframes for examination and decisions

**Thank you for listening**

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