

DCOs: The role of local authorities

Richard Turney

Outline

- Pre-application
- Acceptance and adequacy of consultation
- The examination process
- Local authority as landowner
- Post-consent

Context

- PA 2008 removes some planning functions from LPAs
- Act preserves an important role for the LPA but essentially as consultee rather than decision-maker
- In many cases LPA may also be affected landowner
- Nature of NSIPs is that multiple local authorities may be affected
- LPA retains enforcement role and may participate in subsequent approvals

Pre-application legal framework (1)

- Under s 42(1), the Applicant must consult the local authorities identified in s 43 before making the application (and the GLA where relevant)
- A local authority is within s 43 if the land is in the authority's area
- Local authority may also fall to be consulted as a landowner (s 44)
- Some local authorities will fall to be consulted under Schedule 1 Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009/2264 even if proposal not within its area (e.g. highway authority where application “likely to have an impact on the road network or the volume of traffic in the vicinity of the proposal”)

Pre-application legal framework (2)

- Where a *scoping opinion* is sought from the Secretary of State, the S/S must consult the LPA before giving that opinion (reg. 10 Infrastructure Planning (Environmental Impact Assessment) Regulations 2017/572)
- The Applicant must consult the local authority on how it proposes to consult with the local community (s 47(2))

Pre-application – key points

- Engage with Applicant early
- Seek to identify key concerns/priorities and develop understanding of impacts
- Consider impacts on local communities and how best to consult them
- Seek to align officer views (across a range of disciplines) and political views
- Agree delegations and decision-making processes
- Engage external expert and legal advice

Acceptance

- Entitled to make representations on the adequacy of pre-application consultation: s 55(4)
- Consider scope of acceptance provisions in s 55: has the applicant complied with the procedure?
 - Adequacy of consultation representation needs to focus on that
 - No need to rehearse planning objections at this stage

Examination: overview

- Entitled to participate in the same way as any other person (“relevant representations”)
- Special role in preparing local impact report
- Expectation (from local people and to lesser extent ExA and Applicant) that will represent the views of the wider community

Local impact report

- A “local impact report” is a report in writing giving details of the likely impact of the proposed development on the authority’s area (or any part of that area) (s 60(3)); must be taken into account by ExA and S/S
- Required at an early stage in examination process
- See [PINS Advice Note 1](#) (Version 2, April 2012)
 - Local authorities “strongly encouraged” to produce LIR
 - List of topics to cover
 - Does not need to replicate ES nor be the subject of consultation
 - Do not need to assess against NPS

Relevant representations, written representations, statements of common ground

- Primarily a written process
- Need to summarise concerns in RR – helps to set the agenda
- Able to develop more fully in written representations
- Statements of common ground with applicant – but also worth exploring common ground with other stakeholders (e.g. statutory bodies)

Examination hearings

- Preliminary meeting
- Issue specific hearings
- Compulsory acquisition – where relevant to local authority
- Open floor hearings
- DCO hearings
 - Particular role of LPA in enforcement and discharge of requirements

Examination: key points for local authorities

- Be guided by what really matters: after LIR, it is not the job of the local authority to assess the application generally on its merits
- Maintain dialogue with Applicant and demand they do the same
- Actively participate in the oral process where relevant to concerns
- Be clear as to what you want
 - Refusal? If so, on what grounds
 - Requirements? If so, do they meet the tests
 - Development consent obligations? If not offered, what should ExA do?

Local authority as landowner

- May need to distinguish interests as landowner from those as planning authority
- Authority may have to accept offer for acquisition of land whilst maintaining opposition to scheme
- Consideration of separate representation

Post consent stage

- Discharge of requirements e.g. Tilbury 2 “*Construction of [certain buildings] must not commence until the details of the external materials to be used in the construction of those works have been submitted to and approved in writing by the relevant planning authority, in consultation with Historic England and Gravesham Borough Council*”
- Other regimes – EPA, subsequent planning applications etc.
- Enforcement (Part 8)
 - Prosecution
 - “Notice of unauthorised development”
 - Injunctions

Conclusions and key points

- Early engagement and preparation is key – do not wait for the Applicant or for the ExA's timetable
- Look for agreement – e.g. with other local authorities, statutory consultees
- Take the most important points to examination
- Understand and communicate the resource implications
- Accept (and celebrate?!) the fact that someone else will decide the application

Richard Turney
rturney@landmarkchambers.co.uk

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London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

 clerks@landmarkchambers.co.uk

 www.landmarkchambers.co.uk

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