

Consenting energy development under the TCPA 1990 and PA 2008



Richard Turney

Scope of presentation

- The role of each route to consent (thresholds)
- Key opportunities and pitfalls in each route
- The current policy matrix
- Legal challenges
- Future reform



Consenting energy infrastructure

- Thresholds in PA 2008 determine what is an “NSIP” and what is not
- Section 14 defines NSIPs
- “Energy” NSIPs further defined in ss 15-21
 - Note in particular absence of onshore wind in s 15
- Section 33 means that where within the NSIP threshold, consent neither required under other regimes, nor can be it be given
- Section 35 directions “in the field of energy”
- TCPA 1990 primary route to consent outside the NSIP thresholds
- Residual role for Electricity Act 1989
- Note also s 34 PA 2008 for Welsh offshore generating stations

- Over 50MW onshore, and over 100MW offshore for generating stations
- Single consenting route including acquisition of land and rights: an opportunity or a pitfall?
- Complexity of pre-application process
- Delays to examination and decision-making
- Rise of refusals and legal challenges

Key issues under PA 2008



TCPA 1990

- Speed?
- Local determinations: vice or virtue?
- Role of the development plan
- Appeal process
- Consequences of Levelling Up and Regeneration Bill

Key issues under TCEPA 1990



Current policy matrix

- The NPS and the emerging NPS suite
- NPPF and likely changes
- Clarity around policy on climate change?
 - Is there a clear “policy” in NSIP decision-making for renewables?
- Solar and interaction with other policy areas
- Onshore wind

Legal challenges

- Key risks in each consenting route
- Timing and prospects of legal challenges
- Key issues in recent challenges

Future reform

- Energy NPS suite
- Grid reviews including Offshore Transmission Network Review
- Onshore wind

Thank you for listening

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London

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

Birmingham

Cornwall Buildings
45 Newhall Street
Birmingham, B3 3QR
+44 (0)121 752 0800

Contact

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

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