August 2010

Review

Planning

IPC to survive until 2012

The coalition Government has already begun to implement its localism and decentralisation agenda with the abolition of Regional Spatial Strategies and has now published a full timetable of proposed reforms. The main instrument of reform will be the Localism Bill, which the timetable anticipates will receive Royal Assent by November 2011.

Although the Localism Bill will contain provisions for the establishment of a new Major Infrastructure Projects Unit, this new body is not expected to be established before April 2012. The Infrastructure Planning Commission will continue to function in the interim, with the coalition Government already committed to retaining a fast-track process for major projects whereby applications will be referred to the Secretary of State once the IPC process has been completed.

Decentralisation minister Greg Clark offered comment on the IPC reforms, stating "The previous system lacked any democratic legitimacy by giving decision-making power away to a distant quango on issues crucial to every community in the country. The coalition is remedying those deficiencies by putting in place a new fast-track process where the people's elected representatives have responsibility for the final decisions about Britain's future instead of unelected commissioners."

"Government proposes abolition of Regional Spatial Strategies"

Wind Farms to face tougher noise controls?

The current rules regarding the acceptable level of noise for wind farm developments are set to be reviewed due to inconsistencies in the way in which they are applied. The guidance itself is clear, stating that wind farms should operate at no more than 5 decibels above background noise with an upper limit of 40 db in the daytime and 43 db at night. There have, however, been concerns about how authorities have been applying the limits. A leaked document from the Department for Energy and Climate Change revealed that "It has been brought to our attention that inconsistent approaches have been taken to the practical application of the guidance."

In response to the problem, DECC has commissioned a review of the current position which will be carried out by Hayes McKenzie, a specialist wind farm consultancy firm. The review is to begin next month and is expected to be finished by the end of the year.

Energy Minister Charles Hendry stated "Noise is a key issue to be taken into account in considering proposals for wind farm development. Our aim is to ensure that [the guidance] is applied in a consistent and effective manner and that it is implemented in a way that provides the intended level of protection." Charles Anglin, head of RenewablesUK, believes that developers have little to fear from the review: "We welcome the review because we think it will show very clearly that although there are very loud myths about wind power there actually isn't a noise problem."

Environmental Impact Assessment consultation

The Government has issued a consultation paper outlining proposed amendments to the Town and Country Planning (Environmental Impact Assessment) Regulations 1999. The proposed changes are more of a slight tweak than an extensive overhaul of the existing legislation, and are mainly in response to problems identified by recent case law.

In a recent judgement the Court held that paragraph 13 of Schedule 2 of the Regulations does not properly implement the European Directive from which it originates. At present the environmental effects of an extension to Schedule 2 development are only considered in relation to the expansion itself. To properly comply with the directive it is necessary to consider the development as a whole once modified. Therefore paragraph 13 of the Schedule will be amended so that the thresholds apply to "the development as a whole once changed or extended." In addition a new proposal will

be inserted which will require that any change or extension to a Schedule 1 development (where the change is not a Schedule 1 development in its own right) must also be screened.

Following a ruling in the European Court of Justice it has been confirmed that there is no requirement for an authority to provide reasons for a screening opinion or direction which concludes that Environmental Impact Assessment is not required. The ruling did, however, state that if an interested party requests such information then it must be made available. In response to this the Government is proposing to introduce a new regulation which requires reasons for screening directions to be given even where EIA is not required. This is intended to provide a more balanced and transparent process.

The Government is also proposing to alter the thresholds which determine whether a wind turbine is classed as Schedule 2 development. At present any turbine over 15 metres tall is classed as Schedule 2 development but if the proposals are implemented this will increase to 18 metres. The consultation period on the proposed changes began on 9 August and will run until 25 October 2010.

“ The Government proposes altering thresholds on wind turbine classification.”

BOCARDO SA V STAR ENERGY ONSHORE UK LTD

An energy company had carried out activities relating to the extraction of oil beneath a property without the title owner's permission. The issue raised was whether this constituted a trespass, and to what extent does the owner of the surface land also own the substrata which lie beneath. Star Energy had a statutory licence to perform acts necessary for the extraction of oil, and the works underneath the landowner's property were performed from adjoining land and did not cause any damage to the land. Nevertheless, the landowner asserted that he was entitled to a 'share of the spoils' from any extraction.

The Court held that a landowner owns all substrata which lie beneath his property up to a undefined depth where the notion of ownership becomes absurd. The works involved in this case would not be so deep to render the notion of ownership absurd, and hence a trespass had occurred. However, the Court held that the correct measure of damages was not a 'fair share of the spoils', but rather adequate compensation for the act of performing the operation (in this case installing pipes). This compensation was measured at £1,000.

R (ON THE APPLICATION OF MIDCOUNTIES CO-OPERATIVE LTD) V WYRE FOREST DISTRICT COUNCIL

The Appellant lodged an appeal against the grant of planning permission to a rival supermarket. The grounds for appeal were that the planning application had applied for permission for a supermarket with net retail sales space of no more than 2403 sq metres. Planning permission had been granted with a condition limiting floor space for “net retail sales up to 2919 sq metres,” this figure being the total area of the proposed building including access areas not intended for retail. The Applicant contended that the permission was uncertain and also unlawful due to the principle that a planning authority can grant no more than what is sought.

The Court held that although the condition was poorly drafted, it was plainly possible to ascribe to it a sensible meaning. Hence there was no issue of uncertainty. The issue of unlawfulness was cured by the fact that there was a section 106 agreement which expressly limited the sales area to 2403 sq. metres and therefore the planning permission taken together with the s.106 agreement provided a sufficiently certain form of control which did not grant more than was sought.

FURTHER INFORMATION
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