



The Planning
Inspectorate

The Planning Act 2008 Paramount London

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What we will cover today

1. The Planning Act 2008 and National Infrastructure
2. Extending the regime to business & commercial projects
3. The process and Local Authority role
4. EIA and Habitats Regulations Assessment
5. Questions



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The Planning Act 2008



National Infrastructure regime

- Created by Planning Act 2008
- First application received August 2010; first decision issued October 2011
- National Infrastructure: major energy, transport, waste, water and waste water project
- England and Wales
- Current caseload:
 - 58 at pre-application
 - 6 at pre-examination and 11 in examination
 - 4 in decision
 - 14 decided (of which 13 granted)



The Planning Act: key features

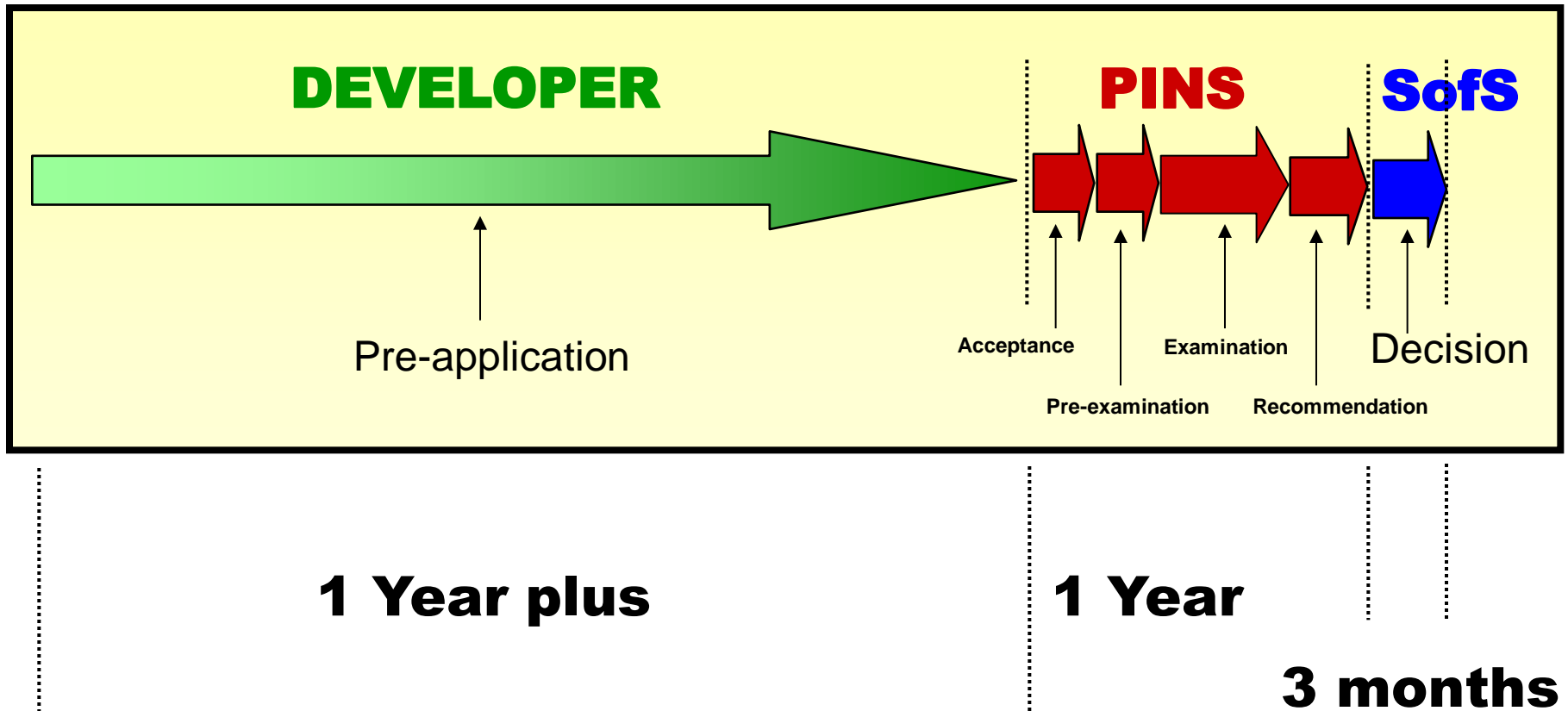
- Front-loading: mandatory pre-application consultation
- Total and complete application – limited scope for post-application changes
- Statutory timescales for handling applications
- Streamlined consenting regime – can bring together a range of consents
- National Policy Statements provide policy framework
- Planning Inspectorate examines and makes a recommendation
- Decision by Secretary of State





The Planning Act 2008

As amended by Localism Act 2011





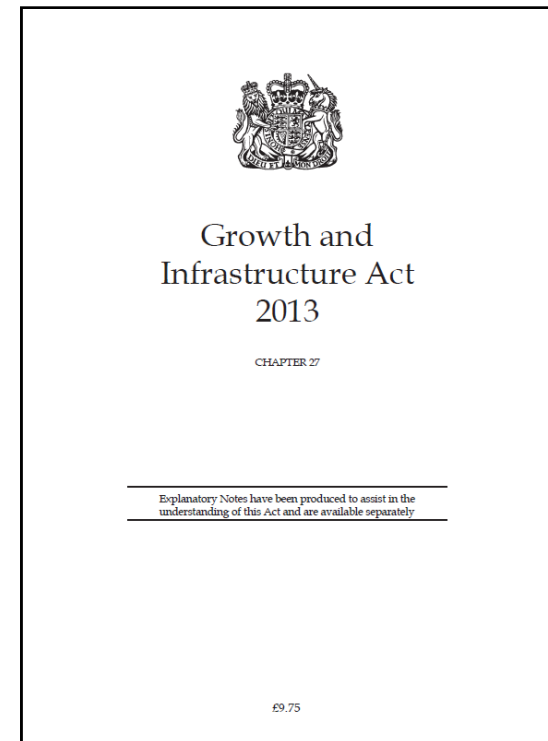
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Extending the regime to Business & Commercial projects



Extending the regime to Business & Commercial projects

- Process working well for existing users. Certainty of timescales and 'one stop shop' approach welcomed. Ability to include powers of Compulsory Acquisition.
- Growth & Infrastructure Act 2013 (s26) provides for Secretary of State to direct B&C projects into the PA2008 regime
- Draft Regulations, ministerial statement and CLG policy paper published 29 October 2013





Business and commercial project types and indicative thresholds

Category (source: draft Regulations)	Indicative threshold (source: CLG policy statement)
Offices	Floorspace >40,000m ² (gross internal area)
Research & Development	
Manufacturing facilities	
Distribution / storage	
Conferences / exhibitions	
Sports stadia	> 40,000 seats
Leisure	> 100 hectares
Tourism	> 100 hectares
Some mining	> 150 ha area



When and how can Business & Commercial projects apply?

- Regulations expected to be made just before Christmas recess – may be further amendments
- Once the legislation is made, developers may make a request in writing for a direction to the Secretary of State for CLG
- Request to include:
 - Justification that project is within the prescribed description
 - Reasons why it is nationally significant
- Secretary of State has 28 days to decide whether to grant request
- Meanwhile developers can talk to PINS about the proposed project



What will the SofS consider in deciding a request for direction?

- Significant economic impact
- Impacts a wider area than a single LA area
- Substantial physical size
- Important to the delivery of an NSIP or significant development
- Would the project require multiple consents and therefore benefit from a single authorisation regime

Onus on the developer:

- To provide this information to the Secretary of State
- To consider when a direction should be requested – overall consenting strategy
- To consider and explain the policy framework

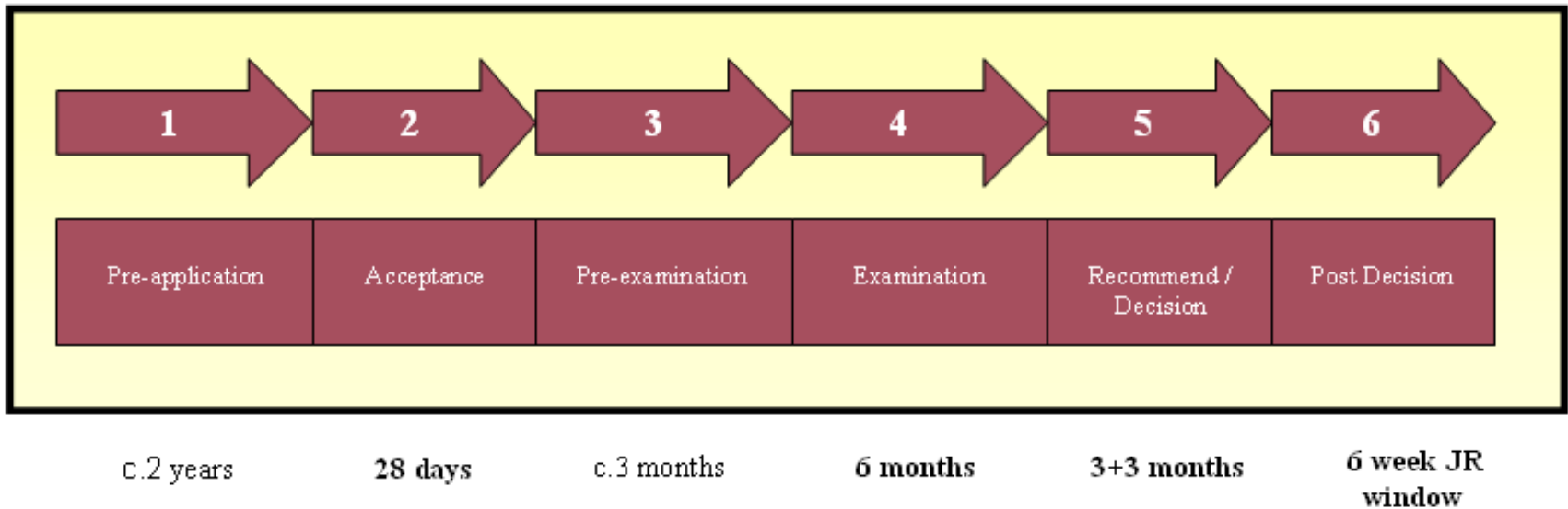


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The Process and Role of Local Authorities



The Development Consent Process



Times in **bold** are statutory



Role of LAs – Pre-application

Developer leads pre-application stage; PINS and LAs advise

Local authority role:

- Prescribed consultee for Planning Inspectorate's EIA scoping opinion
- Must be consulted on developer's draft Statement of Community Consultation (s47)
- Prescribed consultee for developer's pre-application consultation (s42), including Preliminary Environmental Information
- Developer duty to 'have regard' to responses received (s49)
- Discuss and agree ES methodologies, findings and mitigation
- Review draft application docs – Development Consent Order



Role of LAs – Application submitted

- **'Acceptance' stage:** PINS has 28 days to decide whether the application meets the standards to proceed to examination
 - Consultation report – has developer met commitments?
 - Environmental Statement and HRA report checks
 - Plans and other supporting documents
- During this stage, views from the relevant local authorities about the adequacy of the developer's consultation will be invited
 - Consultation Report provided
 - 14 days to respond



Role of LAs – Pre-examination stage

- Developer gives notice of accepted application
- Host LAs are automatically 'Interested Party' in examination
- Make a 'relevant representation' – this informs the Examining Authority's list of issues and examination timetable (min. 28 days)
- All relevant representations are published and Examining Authority appointed
- Receive 'Rule 6' letter – Examining Authority's initial assessment of principal issues and draft examination timetable
- Attend Preliminary Meeting (held locally) - procedural meeting held to discuss how the Examination will be conducted
- Pre-examination stage normally 3-4 months in total



Role of LAs - Examination

- Examination can not exceed 6 months - timetable sent to all parties
- Primarily a **written process**. Key written submissions:
 - Written representation (your full evidence)
 - Response to Examining Authority's written questions
 - Local Impact Report
 - Possible Statements of Common Ground
- **Hearings** may also be held: Open Floor, Issue-Specific and/or Compulsory Acquisition
- PINS website publishes ALL examination documents



Statutory timescales

Pre-app	EIA Scoping Opinion consultation (PINS)	28 days
	Pre-application consultation with local people (s47)	Min. 28 days
	Pre-application consultation with prescribed bodies including LAs (s42)	Min. 28 days
	Publicity in newspapers (s48)	Min. 28 days
Pre-examination	Submission of relevant representation following application acceptance	Min 28 days
Examination	Submission of detailed written representations	Min 21 days
	Possible participation at hearings	Min 21 days notice



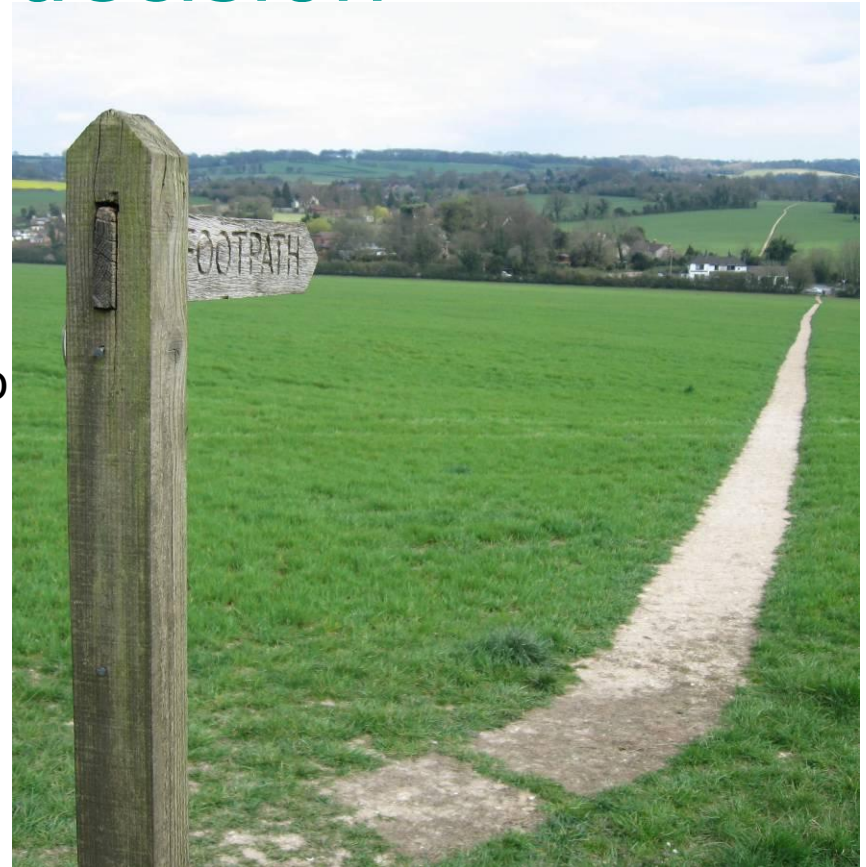
Recommendation and Decision

- ExA recommendation (3 months); SofS decision (3 months)
- SofS Competent Authority - HRA consultation as necessary
- Where no NPS exists, decisions need to take into account (s105):
 - Local Impact Reports
 - 'Important and relevant matters'
 - Any prescribed matters
 - International obligations (eg on biodiversity)
- PINS notifies all Interested Parties of the decision



Role of LAs – Post-decision

- SofS decision challengeable through application for Judicial Review – 6 week period following decision
- Discharging requirements (akin to planning conditions):
 - key role for Local Planning Authorities in discharging requirements, monitoring and enforcement
- Limited scope for post-consent changes to the scheme or mitigation





Things to consider

- Timing of a request for a direction
 - Implications for EIA scoping
 - Implications for consultation
- Level of flexibility being sought in the consent – how to deal with uncertainty
- Local Authority delegation arrangements
- Resources: possible Planning Performance Agreements / Memorandum of Understanding



Environmental Services

- Scoping and Regulation 9 lists
- Preliminary Environmental Information Report (PEIR)
- Advice Note 7
- Requests under section 52 about interests in land, and under s 53 requesting access for environmental surveys
- Transboundary effects





Habitats Regulations Assessment

- The Habitats Directive and Habitats Regulation 2012
- Stage 1 Screening - Will there be likely significant effects on a European site (SAC / SPA / Ramsar)?
- If no, prepare no significant effects report (NSER)
- If yes, Stage 2 – Appropriate Assessment. Will there be an adverse effect on the integrity of the site in view of its conservation objectives?
- If yes, Stage 3, assessment of alternatives
- If there are no alternatives, Stage 4, assessment of IROPI



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Any questions?

0303 444 5000

<http://infrastructure.planningportal.gov.uk/>