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Infrastructure Planning Commission Process: Lack of Flexibility Compared to Normal Planning Process

Thank you for your letter of 28th March raising concerns regarding certain aspects of the infrastructure planning regime. This is a new regime, and there is much that all of us – not least applicants, local authorities, and we ourselves at the IPC – still need to learn about how best to implement the regime in practice. A fundamental consideration is that the regime is specified in great detail in statute and regulations. The consequences of this level of detailed prescription are not always welcome to all stakeholders, but in many respects we must accept that Parliament intended to limit discretionary powers in order to secure parliamentary and public confidence in an accelerated and rationalised process.

Turning to the particular points you make, you are right to say that there are no powers in the Planning Act 2008 (the 2008 Act) equivalent to those under which CLOPUDs can be sought. It is a matter for the Commission to conclude at the “Acceptance” stage whether at least part of the proposal before it does require development consent under the Act – s55(3)(c) and s31 of the 2008 Act refer. While secretariat staff at the IPC will seek to advise wherever possible on the factors which may bear on such a decision, such advice must necessarily be given without prejudice to the decision of the Commissioner, and applicants will need to take their own legal advice on which they can rely.


With regard to the degree of flexibility within a development consent order, you identify the underlying principle that the proposal for which consent is given must be in material respects the same as the proposal for which consent was sought in the application. This is an intentional aspect of the regime, which requires developers to put serious effort into pre-application work, engaging closely with communities and statutory bodies and refining their proposals before an application is accepted into the fast-track single consenting process.

There are, however, practical opportunities for developers to secure some measure of necessary and appropriate flexibility:

- The draft development consent order (DCO) which must be provided in the application may be presented in terms which offer the applicant a significant degree of flexibility in the design, construction etc of the proposed development. Our recently published Advice Note on the Rochdale Envelope gives useful assistance on this point, and I enclose a copy for you.
- The DCO will no doubt include requirements which provide for details to be submitted for subsequent approval by the relevant authority – in much the same way as planning conditions operate under the Town and Country Planning Act 1990 or indeed conditions to the Transport and Works Act Orders.
- It is intended that non-material changes to the DCO could be sought through a simplified procedure set out in the regulations to be introduced following recent consultation (see www.communities.gov.uk/planningandbuilding/publications/consultations).

I hope this is helpful, and I would certainly encourage you to raise any further concerns you may have about the process, either in general or in relation to particular projects in your area, with me or my colleagues.

This letter provides advice under s51 of the 2008 Act, which will be published on our website.

Yours sincerely


Sir Michael Pitt
Chair

The IPC gives advice about applying for an order granting development consent or making representations about an application (or a proposed application). The IPC takes care to ensure that the advice we provide is accurate. This communication does not however constitute legal advice upon which you can rely and you should note that IPC lawyers are not covered by the compulsory professional indemnity insurance scheme. You should obtain your own legal advice and professional advice as required.

We are required by law to publish on our website a record of the advice we provide and to record on our website the name of the person or organisation who asked for the advice. We will however protect the privacy of any other personal information which you choose to share with us and we will not hold the information any longer than is necessary.

You should note that we have a Policy Commitment to Openness and Transparency and you should not provide us with confidential or commercial information which you do not wish to be put in the public domain.