

NORTH LINCOLNSHIRE COUNCIL

PLANNING COMMITTEE

PLANNING ACT 2008

1. OBJECT AND KEY POINTS IN THIS REPORT

1.1 To inform members of the key provisions of the Planning Act 2008, which received Royal Assent on 27th November 2008 and is expected to become law in early 2009.

1.2 The key provisions of the Act are:

- The creation of an independent Infrastructure Planning Commission (IPC);
- The introduction of National Policy Statements covering a range of policy issues which will guide the work of the IPC
- The introduction of a definition of what constitutes a nationally significant infrastructure project
- Changes to the existing planning regimes (both development control and planning policy)
- The introduction of the Community Infrastructure Levy

1.3 It should be noted that the Planning & Energy Act 2008 also received Royal Assent in November 2008

2. BACKGROUND INFORMATION

2.1 The Planning Act 2008 which gained Royal Assent in November 2008 and is expected to become law in Spring 2009, is the culmination of the Government's review of the planning system.

2.2 This review commenced with the publication of the Planning White Paper *Planning for a Sustainable Future* in summer 2007 which set out detailed proposals for reform of the planning system, building on Kate Barker's recommendations for improving the speed, responsiveness and efficiency in land use planning, and taking forward Kate Barker's

and Rod Eddington's proposals for reform of major infrastructure planning. These proposals were consulted on over the summer of 2007.

- 2.3 Following the White Paper, the Planning Bill was introduced to parliament in November 2007. This built on the White Papers' proposals and sought to introduce a new system for nationally significant infrastructure planning, alongside further reforms to the town and country planning system. At this time proposal emerged to improve both the development control and Local Development Framework systems.
- 2.4 Following debate in both Houses of Parliament and several consultation exercises, the Planning Act 2008 and a number of amended policy statements and secondary legislation has been produced.

3. OPTIONS FOR CONSIDERATION

- 3.1 The Planning Act 2008 (the Act) brings into existence a number of major changes to the the planning system including planning for and delivering nationally significant infrastructure projects, alterations to the existing town and country planning system including the development control system as well as the Local Development Framework system, and the introduction of a Community Infrastructure Levy.
- 3.2 One of the key provisions of the Act is the creation of the independent Infrastructure Planning Commission. This new Commission will be responsible for making decisions on major infrastructure of national significance. The Commissions decisions will be guided by National Policy Statements. While local authorities will be consulted on these developments, the final decision will be taken by the Commission, which may be a concern for local communities.
- 3.3 The Infrastructure Planning Commission is independent and responsible for examining applications for nationally significant infrastructure projects. Nationally significant infrastructure projects are defined in the Act and cover infrastructure for transport, energy, waste and water. There are specific requirements that determine whether a development falls under the Commission's responsibilities for 16 categories included in the Act. For instance, generating stations over 50 megawatts onshore or over 100 megawatts offshore would make their application through the Commission, those under this size would use the existing planning permission mechanism. Where development consent is given by the Commission the requirement for other development consent, such as planning permission or requirements in relation to other Acts including Green Belt Act 1983 and Listed Buildings Act, is removed.

- 3.4 The decisions that the Commission make about developments will be framed by National Policy Statements (NPS). The NPS could cover a range of developments and its scope will be for the discretion of the Secretary of State. The NPS will however be expected to set out:
- the amount type or size of the development either nationally or for a specific area
 - criteria for the suitable location for the development or identify one or more suitable or unsuitable location
 - the relative weight given to parts of the criteria
 - one or more statutory undertakers as appropriate to carry out a specified description of development
 - the circumstances for a specified action to mitigate the impact of a development.
- 3.5 Every NPS must go through a sustainability appraisal and consultation process. In addition, there needs to be an explanation of how the NPS takes account of policy to mitigate and adapt to climate change.
- 3.6 There is also an amendment to existing planning policy to ensure Regional Spatial Strategies and Development Plan Documents contribute to climate change policy.
- 3.7 The Commission will have to provide further guidance on applying for development consents through the Commission. The Commission may also set standards for the preparation and provision of information for these applications. There are some requirements in the Act for the application process including a duty on the applicant to consult two categories about the proposed application:
- local authorities affected by the development
 - any persons affected by the development such as occupier of the land or is interested in the land.
- 3.8 There is also an additional duty on the applicant to prepare a statement explaining how they will consult the community in the vicinity of the land about the proposed application. This statement to the community must be prepared in consultation with the local authority. The applicant will then have to publish the statement in a newspaper and carry out the consultation.
- 3.9 The Commission may decide that the decision for development consent should be carried out by a single Commissioner or a designated Panel. This becomes the Examining authority who will need to take into account initial assessments of issues and then decide how

the examination will be examined. This may include written representations or public hearings about specific issues. Where an application requests the compulsory acquisition of land the Examining authority must inform all affected persons of the deadline for a response to the application. If there is a response from anyone then a hearing must be held. It is also possible for any affected party to request an open-floor hearing.

- 3.10 The Examining authority should complete an inquiry within six months. The decision on the application should have regard to the relevant national policy statement, any local impact report or other matters relevant to the application.
- 3.11 The Community Infrastructure Levy is designed to provide funding for infrastructure to support the development of an area. It would be paid by owners or developers of land through the local planning authority. In the Act infrastructure is understood as:
 - roads and other transport facilities
 - flood defences
 - schools and other educational facilities
 - medical facilities
 - sporting and recreational facilities
 - open spaces
 - affordable housing.
- 3.11 The local planning authority will need to set out a charging schedule, which explains the rates and criteria for development in their area. The Secretary of State will make further regulations for CIL, which include who is liable, the procedure for charging and enforcement.
- 3.12 It should be noted that the proposals in the Planning Bill 2007 to the planning appeals system whereby local appeal boards would be set up to determine planning appeals rather than the Planning Inspectorate have not been included in the Act.
- 3.13 Members should also be aware that the Planning and Energy Act 2008 also gained Royal Assent. This is a short Act that gives local planning authorities the ability to include energy requirements for developers in their Development Plan Documents. This means a proportion of energy in the development can be required to be from renewable sources; low carbon sources; or the development can be required to comply with energy efficiency standards.

4. ANALYSIS OF OPTIONS

- 4.1 The creation of an independent Commission to make decisions on major infrastructure raises concerns about local democracy. By moving these decisions from local planning authorities to a national body the chances are local community concerns can be more easily ignored. There is however a duty to consult and local authorities will need to make the most of this in situations where there are strong local concerns about the development. The most recent example of a national panel making decisions on development is the eco-towns programme. Unfortunately, the collapse of that programme does not bode well for this model.
- 4.2 On a brighter note the inclusion of climate change in regional and local development plans is a welcome addition. Planning can shape communities that are mitigating climate change and also ensure they are resilient to expected climate change, such as flooding or heatwaves. There is a link here between a number of Acts that gained Royal Assent in November 2008, including the Energy Act and Climate Change Act.
- 4.3 It is welcomed that the proposals to change the planning appeals system have not been carried forward into the Act. Members will recall that this council, in its response to the Planning Bill 2007, objected to these proposals. Accordingly, it is welcomed that this councils' views together with others have been taken into account.

5. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)

- 5.1 Financial - the introduction of the Community Infrastructure Levy (CIL) will result in funding for new infrastructure associated with future development being brought forward.
- 5.2 Staffing - any implications will be met from existing staffing resources.
- 5.3 Property - there are no property implications.
- 5.4 IT - there are no IT implications

6. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)

- 6.1 Statutory - will introduce major changes to planning for nationally significant infrastructure as well as bringing forward changes to the statutory development plan system via updates to the Planning & Compulsory Purchase Act 2004.
- 6.2 Environmental - there is now a statutory duty for development plans to contribute to climate change policy.

- 6.3 Diversity - the Local Development Framework is the subject of a Diversity Impact Assessment.
- 6.4 Section 17 - Crime & Disorder - the policies contained in the Local Development Framework and other planning policy, particularly those relating to the design of buildings and spaces, will aim to contribute to reducing crime and the fear of crime.
- 6.5 Risk - there are no other risk implications.
- 6.6 Other - there are no other implications.

7. **OUTCOMES OF CONSULTATION**

- 7.1 The Planning Act 2008 is not available for consultation. Where appropriate, comments from key council officers have been included in this report

8. **RECOMMENDATIONS**

- 8.1 Members note the information contained in this report.

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Background Papers used in the preparation of this report

Planning Act 2008 (The Stationary Office, December 2008)

Planning Act 2008 - Briefing Note (LGIU and STEER, December 2008)

Plan Making Manual (Planning Advisory Service, 2008)