

NORTH LINCOLNSHIRE COUNCIL

**NEIGHBOURHOOD, ENVIRONMENT AND COMMUNITIES
CABINET MEMBER**

IMPACT OF PLANNING ACT ON NUISANCE

1. OBJECT AND KEY POINTS IN THIS REPORT

- 1.1 To provide a briefing on the impact of the new Planning Act on nuisance issues and actions being taken nationally to minimise potential difficulties.
- 1.2 The key points in this report are as follows:
- The Planning Act received Royal Assent in November 2008.
 - The Planning Act introduces a new system for approving major infrastructure of national importance.
 - Developers will have a defence against a council taking nuisance action.

2. BACKGROUND INFORMATION

- 2.1 The Planning Act introduces a new system for approving major infrastructure of national importance, such as harbours and waste facilities, and replaces current regimes under several pieces of legislation. The objective is to streamline these decisions and avoid long public inquiries.
- 2.2 The Planning Act received Royal Assent in November 2008. During the parliamentary process a clause was inserted that would always prevent councils from stopping nuisances, such as noise, odour and dust from Nationally Significant Infrastructure Projects (NSIPs).
- 2.3 NSIPs are major types of development that are set out in the Planning Act. Examples include power stations and hazardous waste facilities.
- 2.4 The new Infrastructure Planning Commission (IPC) will hear evidence and be responsible for deciding whether NSIPs can go ahead, and what conditions the developer will have to comply with.
- 2.5 National Policy Statements (NPSs) will guide the IPC on issues such as development consent conditions and will set out criteria for decisions.
- 2.6 Local Authority Coordinating Body on Regulatory Services (LACORS) worked with other organisations including Environmental Protection UK and the Chartered Institute of Environmental Health to raise serious concerns about the clause. Tackling nuisance is a key role of councils in

protecting the health and well-being of the community and the local environment.

2.7 This clause was withdrawn in the House of Lords following lobbying by the coalition of organisations. The clause was replaced with Clause 157, which confers a defence of statutory authority, rather than a broad exemption. This represents an improvement and some success. However, LACORS still has concerns as the clause is open to interpretation and believes that there are serious implications for councils:

2.7.1 Developers of NSIPs will have a defence against a council taking nuisance action for both the construction and on-going use of the project as long as the developer fully complied with the conditions set out in the development consent order, set by the IPC in line with NPSs.

2.7.2 The defence will not apply where the developer has been negligent.

2.7.3 The IPC has the power to remove the defence for a particular case, if it believes it is appropriate to do so. When making this decision, it will take into account NPSs and evidence submitted, for example local impact assessments.

2.7.4 Compensation can be claimed, but only for depreciation of land and only those with an interest in the land would be able to apply. No compensation is available on the basis of damage to health and/or well-being.

2.8 LACORS is continuing to:

2.8.1 Influence the drafting of NPSs so that clear and robust provisions are included as these will steer the conditions that the IPC set for developers to minimise nuisance. A timetable for drafting of NPSs is expected in early 2009.

2.8.2 Provide guidance to councils on how to effectively engage with and influence the IPC.

3. OPTIONS FOR CONSIDERATION

3.1 To note the introduction of the new Planning Act. To support the work of LACORS, on behalf of local authorities, aiming to minimise the potential for nuisance from major infrastructure projects.

3.2 As this is new legislation there are no further options available.

4. ANALYSIS OF OPTIONS

4.1 No further analysis is required.

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

5.1 There are no resource implications to consider at this stage.

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

6.1 Statutory: This new legislation will undermine the councils existing powers to deal with nuisance contained within the Environmental Protection Act.

6.2 Environmental: This new legislation will potentially have a major impact on the ability of the council to protect the public and environment from nuisance issues created by major infrastructure projects.

7. OUTCOMES OF CONSULTATION

7.1 No local consultation has taken place on these issues, which are being developed and implemented nationally.

8 RECOMMENDATIONS

8.1 That the Cabinet Member notes the impact of the new Planning Act on nuisance issues and actions being taken nationally to minimise potential difficulties.

8.2 That the report be referred to the Local Strategic Partnership Environment Board for information.

SERVICE DIRECTOR: NEIGHBOURHOOD & ENVIRONMENT

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Background Papers used in the preparation of this report Nil