

# Growth and Infrastructure Bill - Measures to Facilitate Development

Hot on the heels of changes to the Community Infrastructure Levy, the Government has published a Growth and Infrastructure Bill containing a mixed bag of reforms to speed up or otherwise facilitate development. The principal reforms proposed in the Bill are as follows:

- **Bypassing local planning authorities (LPAs):** The Bill contains the framework powers to allow planning (and associated) applications to go directly to the Secretary of State (or most likely the Planning Inspectorate) in circumstances where LPAs are not performing. The Mayor of London will be able to regain control of any such applications in London. These powers will need to be fleshed out by further regulations.
- **Removal of onerous Affordable Housing requirements:** A new mechanism is inserted allowing an application to set aside or modify onerous affordable housing obligations under S106. The application is made to the appropriate authority<sup>1</sup>. An application only has to be considered by the authority if the affordable housing requirements make the development non-economically viable. Determinations by the LPA or Mayor of London can be appealed to the Secretary of State.
- **Business and Commercial projects as NSIPs:** The Bill provides a power for the Secretary of State to direct that business and commercial projects of a prescribed description are treated as Nationally Significant Infrastructure Projects (NSIPs) and therefore subject to the development consent order (DCO) procedures of the Planning Act 2008. Contrary to initial indications, projects including any housing will not qualify.

As is currently the case for S35 directions, this power would be exercised only in relation to individual developments based on an application by the proposed developer.

- **Limiting LPA information requirements:** A reasonableness requirement is imposed on LPA powers to seek further particulars and evidence in support of planning applications.
- **Allowing concurrent highways order and planning applications:** Powers are introduced to allow applications for stopping-up / diversion of highways and footpaths to proceed concurrently with the planning application. Previously, the procedures could not be commenced in a meaningful way until planning permission had been granted except in very limited circumstances.
- **Town and village greens:** Changes to the Commons Act 2006 have been included to allow landowners more easily to prevent town and village green rights arising which could prevent development taking place. Among the changes are a series of new trigger events that will prevent registration of land as a town or village green. These include the making of a planning application in relation to the site (or first publication of development consent order application), or the inclusion of the land as having potential for development in the various development plan documents or preparatory plan documents.

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<sup>1</sup> This is generally the LPA; but it would be the Mayor of London for obligations enforced by him or the Secretary of State for obligations arising out of development consent orders.

- **Inquiry Costs:** The Bill provides for more flexibility in the award of costs in relation to planning and compulsory purchase inquiries.
- **Local authority land disposals:** More flexibility is given to the Secretary of State to allow consent to be given to disposals of local authority land at less than the best price reasonably obtainable. Previously such powers had to be given individually to disposals but the new powers allow consent to be granted to: classes of disposal, or all disposals by particular local authorities or categories of authority. Such consents might come with conditions attached.
- **NSIPs – Special Parliamentary Procedure (SPP):** The SPP for determining DCOs will no longer apply to local authorities and statutory undertakers who have objected to their land being taken for an NSIP. The SPP will also no longer apply to open space land affected by an NSIP where suitable replacement land is effectively unavailable and the delay caused by following the SPP would not be in the public interest. The SPP will remain applicable to National Trust Land. The case of the Rookery South Energy from Waste Project which has been tied up before Parliament for a significant time illustrates the need for changes.
- **Variation of S36 consents:** For power schemes, the Bill contains a provision allowing S36 consents to be varied as is currently possible under S37 for overhead power lines. This will enable changes to consents to be sought through a simplified process of consultation and scrutiny. In addition, deemed planning permission will be available in relation to any development contained in the variations.

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