Butterworths Planning Law Service

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LEGISLATION

New judicial review time limits in force as of 1 July 2013

The Civil Procedure (Amendment No. 4) Rules 2013 (SI 2013/1412) were laid in Parliament on the 10 June 2013 and came into force on 1 July 2013.

They amend Parts 52 and 54 of the Civil Procedure Rules 1998, resulting in the following:

- a reduction in the time limits for bringing a claim for judicial review **from three months to six weeks** from the date when grounds for the application first arose in planning cases and within **30 days** in procurement cases (Rule 54.5);
- the introduction of a new fee of £215 for an oral renewal hearing if the initial permission has been refused; and
- the removal of the right to an oral renewal where the case is assessed as 'totally without merit' on the papers.

The amendments do not apply to judicial review applications where the grounds arose before 1 July 2013.

The change in time limits means that JRs are now in line with challenges to development consent orders made under the Planning Act 2008 and challenges to planning appeal decisions.

Revised NSIP electric line thresholds in force as of 18 June 2013

The Planning Act 2008 (Nationally Significant Infrastructure Projects) (Electric Lines) Order 2013 was made on the 17 June 2013 and came into force on

the 18 June 2013. The Order is made under s 14 of the Planning Act 2008 and inserts a threshold for electricity lines contained in s 16 of the Act.

Following the changes, an electric line only falls within the Act if it is a **new line** (of 132 kilovolts or more) of more than 2km in length. If an **existing line is being replaced**, it will only fall within the PA 2008 if:

- the voltage of the replacement line is greater than the voltage of the existing line (except where the line is in a SSSI or a Natura 2000 site);
- the above surface height of any new support will exceed the height of the highest existing support by more than 10%; and
- if it is replacing an existing line but in a different position from the existing line, the distance between any new support and the existing line exceeding 60 metres. The existing line must be removed within twelve months from the completion of the replacement line.

The Government has introduced the changes because it feels that it is more proportionate to apply the regime under the Electricity Act 1989 to applications for development consent for minor works rather than the PA 2008 regime which is intended to apply to projects of national significance.

This Order only applies to development consent order applications made after 18 June 2013.

Streamlined planning application rules in force as of 25 June 2013

The Government published a consultation document ('Streamlining the planning application process') in January 2013 aimed at simplifying the planning application process by making changes to the design and access statement requirements, validation requirements and changes to planning decision notices.

The Government has now published its response to that consultation and the Town and Country Planning (Development Management Procedure) (England) (Amendment) Order 2013 (2013/1238) and the Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2013 (2013/1239) which came into force on 25 June 2013. Both apply in England only.

The Order and Regulations amend the TCP (Development Management Procedure) (England) Order 2010 (DMPO 2010) and the Planning (Listed Buildings and Conservation Areas) Regulations 1990 respectively by:

- Limiting the requirement for design and access statements to major development (defined in article 2 of the DMPO 2010 but excluding engineering and mining operations and waste development) and listed building consent applications. However, in 'designated areas' (conservation areas and World Heritage Sites) a design and access statement will

be required with planning applications for one or more dwelling or a building/s where the floorspace created by the development is more than 100sq m.

- Reducing the prescriptive requirements for the content of design and access statements.
- Making changes to information requirements so that LPAs only request information in their local lists which is reasonable having regard to the nature and scale of the proposed development, so that information requests only relate to matters that it is reasonable to think will be a material consideration in the determination of the application.
- Reinstating a new and simpler right of appeal for the applicant where the LPA refuses to validate a planning application on the grounds of purportedly insufficient information.
- Removing the requirement introduced in 2003 for LPAs to provide a written summary of reasons for approval (and a summary of relevant policies and proposals) on decision notices when granting planning permission.

Revised planning fees regulations come into force on 1 October 2013

The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013 have been made in draft and come into force on 1 October 2013.

The regulations apply in England. They amend the TCP (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (2012/2920) mainly on account of provisions in the Growth and Infrastructure Act 2013 and in the Enterprise and Regulatory Reform Act 2013, relating to the following:

- S 1 (and Schedule 1) of the Growth and Infrastructure Act inserts a new section 62A to 62C into the TCPA 1990 that enables 'major' planning applications to be made directly to the SoS instead of the LPA, where the LPA has been 'designated' because of its poor performance. The new regulations allow the SoS to charge a fee for pre-application advice under s 62A and a fee for the application itself (being the same fee that the LPA would have been entitled to charge).
- Paragraph 6 of Schedule 17 of the Enterprise and Regulatory Reform Act 2013 abolishes conservation area consent. Instead, a planning application will need to be made to the LPA for the demolition. The new regulations provide for such applications to be exempt from the requirement to pay a fee because there is currently no fee for conservation area consent applications.
- S 4 of the Growth and Infrastructure Act provides that where planning permission is granted under PD rights for a change of use, there may be a need for certain matters to be subject to prior approval of the

LPA/SoS before the change of use is begun. The regulations provide for a fee of £80 for any prior approval change of use application to meet the administrative costs of the LPA considering the application.

- Making provision for a refund of the fee where an application for planning permission is not determined within 26 weeks (unless a Planning Performance Agreement has been entered into, or there is a written agreement to extend the period of time for determination). This underpins the planning guarantee set out in the Government's 'Plan for Growth' (March 2011).

Regulations on deposit of landowner statements under s 15A(1) of Commons Act 2006 which protect against registration of land as a Town or Village Green and statements and declarations under s 31(6) of the Highways Act 1980

The Commons (Registration of Town or Village Greens) and Dedicated Highways (Landowner Statements and Declarations) (England) Regulations 2013 (SI 2013/1774) come into force on 1 October and apply only to England. The regulations implement the reforms introduced by ss 13 and 15 of the Growth and Infrastructure Act 2013.

The regulations prescribe the form and procedural requirements (including application fees) relating to applications to deposit both landowner statements under s 15A(1) of the Commons Act 2006 that protect against the registration of land as a TVG and statements and declarations under s 31(6) of the HA 1980, which prevent the deemed dedication of land as highway. They also set out steps an appropriate authority must take upon receipt of an application (including publishing notice of the application) and provide for the recording of prescribed details relating to the deposit of a statement under s 15A (1) in a public register (which may be part of the existing register already maintained by the authority under s 31 (6) of the HA 1980 for highways statements and declarations deposited).

Guidance for local authorities will be published on the https://www.gov.uk/ website in due course. The application form prescribed in Schedule 1 to the Regulations contains notes on how to complete the form and separate supplemental guidance for applicants will be published on the gov.uk website. Local authorities will receive a letter explaining that the regulations will commence in October and that they should familiarise themselves with the regulations and the guidance.

Changes to the railways and highways thresholds in the PA 2008 in force as of 25 July 2013

The Highway and Railway (Nationally Significant Infrastructure Project) Order 2013 came into force on 25 July 2013 and amends the highway and railway thresholds in the PA 2008 as follows:

Highways (*s 22 PA 2008*)

In England, the construction or alteration of a highway is a nationally significant infrastructure project where the SoS is the highway authority (motorways and trunk roads) and the area of the development is greater than 15 hectares if it is a motorway, 12.5 hectares where it is not a motorway but the speed limit exceeds 50mph, or 7.5 hectares for any other highway.

However, a DCO for an alteration is not required in two cases:

1) where planning permission has been granted for development which requires an alteration to the highway and the developer requests the alteration; or

2) a local highway authority has asked for the alteration for local highway works that have already got certain orders under the Highways Act 1980 and the alteration is necessary for the works.

The **improvement** of a highway for which the SoS is the highway authority (motorways and trunk roads) wholly in England will be an NSIP if the improvement is likely to have a significant effect on the environment. A DCO is not required under s 22 where consent for the development was given not more than seven years ago, and which now needs a further order under the Highways Act.

Railways (*s 25 PA 2008*)

The construction or alteration of a railway wholly within England forming part of a network operated by Network Rail and which is beyond the scope of Network Rail's PD rights is a NSIP provided it will include a continuous 2 km stretch of track which is not on operational land (unless the land concerned was acquired for the purpose of carrying out the construction or alteration in question).

Transitional provisions

If a DCO application has already been made before this order comes into force, then the application must continue to proceed under the DCO route.

Amended Permitted Development rights for electronic communications in force as of 21 August 2013

The Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2013 (SI 2013/1868) came into force in England on 21 August 2013. It amends Class A of Part 24 of Schedule 2 to the GPDO 1995 which gives deemed planning permission, subject to limitations and conditions, for development to be carried out by, or on behalf of, an electronic communications code operator for the purpose of the operator's electronic communications network. This Order widens those PD rights and clarifies the current PD rights.

CASES OF INTEREST

A council was entitled to block vehicular access to a property by erecting barriers under the Highways Act 1980

Cusack* (*Respondent*) *v London Borough of Harrow* (*Appellant*) *[2013] UKSC 40 19 June 2013

Mr Cusack, a solicitor, has practiced out of premises in Harrow since 1969. The front garden of the premises had been turned into a forecourt, which was open to the highway, and on which Mr Cusack and his clients parked. The forecourt had to be entered and exited over a footway. No specific planning permission had been granted for this means of access to the highway, but the Council accepted that the breach having occurred for so long was immune from enforcement action. However, the Council became concerned that movement of vehicles over the footway was dangerous to both pedestrians and other motorists, and therefore proposed to prevent Mr Cusack from driving over the footway by erecting barriers across it.

Mr Cusack's application for an injunction preventing the Council from erecting the barriers was dismissed by the county court, a decision upheld by the High Court. The Court of Appeal allowed the appeal in part (*Cusack v London Borough of Harrow* [2011] EWCA Civ 1514) by applying the principle established in *Pretty v Solly* (1859) 26 Beav 606 that where there is a general provision and a more specific provision, and a course of action could potentially fall within both, the court will usually interpret the general provision as not covering matters covered by the specific provision. The Council could not erect the barriers using s 80 of the Highways Act 1980 but it could use powers under s 66 (2).

The Council had argued it had the power to erect the barriers either under s 80 or as a fall-back, under s 66. S 66 provides highway authorities with a power to provide and maintain in a highway maintainable at the public expense raised paving, pillars, walls, rails or fences as they deem necessary for the safety of highway users. Under s 80, a highway authority can, amongst other matters, erect and maintain fences or posts for the purpose of preventing access to a highway maintainable at the public expense by them.

The Supreme Court unanimously overturned the Court of Appeal decision. Lord Carnwath, giving the lead judgement, stated that the general/specific principle did not assist in this case because neither s 66 (2) nor s 80 can be regarded as more specific or less general then the other.

The Court held that the Council was entitled to rely on the clear wording of s 80 to erect barriers in front of Mr Cusack's property. The fact that the Council could use s 66 (2) to achieve the same objective was irrelevant. However, a highway authority's use of s 80 could be challenged if, for example, it circumvented the specific prohibitions of the use of the power conferred by s 66 (2).

Enforcement notices and the fall-back position – High Court – 16 July 2013

***Ahmed v Secretary of State for Communities and Local Government & Anor [2013] EWHC 2084* (*Admin*) (*16 July 2013*)**

Planning permission was granted in 2005 for the demolition of a property and the erection of a three storey building with a butterfly roof. However, what was actually built was a four storey building with a flat roof. A retrospective planning application was refused for this development and an enforcement notice issued, requiring the complete removal of the building and the restoration of the relevant parts of the previous building.

An appeal was lodged against the enforcement notice under two of the seven grounds of appeal available under s 174 (2) TCPA 1990:

- **Ground (a)**: in respect of any breach of planning control, planning permission should be granted or the conditions attached to a planning permission should be discharged. The appellant argued that retrospective planning permission should be granted for the building as built but did not specify the alternative fall-back position under this ground, namely that retrospective permission for the modification of the building to conform to the lapsed 2005 permission should be granted.
- **Ground (f)**: the steps required by the planning enforcement notice to be taken or to cease exceed what is necessary to remedy any breach of planning control or to remedy any injury or amenity caused by such breach. The appellant argued that the demolition of the whole building was unnecessary, punitive and amounted to over-enforcement. All that was required was for the development to be modified to comply with the design of the 2005 approved scheme.

The appeal against the enforcement notice was dismissed by an inspector on both grounds.

The SoS argued that although the appellant had clearly spelt out his fall-back position under s 174 (2)(f) TCPA 1990, he could not succeed under that ground because the 2005 consent had lapsed; and he could not succeed under s 174(2)(a) for two reasons: firstly, because he had failed to specify the fall-back position expressly as an alternative in that ground of appeal and secondly, there is no general requirement for the inspector to read a submission made under ground (f) across to a submission (or deemed application) made under ground (a).

The High Court allowed the appeal. After considering a number of cases on over-enforcement (*Taylor and Sons* (*Farms*) *v Secretary of State* [2001] EWCA Civ 1254; *Tapecrown Limited v First Secretary of State* [2006] EWCA Civ 1744; and *Moore v Secretary of State for Communities and Local Government and anor.* [2012] EWCA Civ 1202) the court held that there was no additional requirement for the appellant to spell out his fall back position in the context of a ground (a) appeal provided it has been adequately spelt out in his submissions under ground (f).

The meaning of the term 'major development' in the NPPF – High Court – 10 July 2013

***Aston & Anor v The Secretary of State for Communities and Local Government & Ors [2013] EWHC 1936* (*Admin*) (*10 July 2013*)**

This case concerns a challenge to a planning permission granted to Taylor Wimpey on appeal for the erection of 14 dwellings. The High Court dismissed all four grounds of challenge, but the decision is of interest because of its consideration of three matters, namely:

i) the consequence of a defective screening opinion (SO);

ii) the power of an inspector to refuse to allow cross examination of an expert witness; and

iii) whether the term 'major development' in the NPPF should be given the same meaning as in Art 2 of the DMPO 2010.

The negative SO issued by the LPA in this case was criticised by the claimant as being defective, but the court held that the SO was not flawed. However, what is interesting about this judgement is the discussion (albeit obiter) on the consequences had the SO been held to be unlawful. The claimants argued that an unlawful SO should result in the quashing of the planning permission. The SoS and Taylor Wimpey submitted that that even if the SO was unlawful there was no proper basis upon which to quash the planning permission, because the outcome would have been the same. The SoS and Wimpey Taylor placed particular reliance on the fact that the Planning Inspectorate had provided evidence to the court that the Inspectorate followed a set process upon the submission of an appeal.

The inspector had also refused to allow the claimants to cross examine Taylor Wimpey's expert on flood risk at the inquiry, on the basis that flood risk was not likely to be a determining factor, he knew the claimants' case on flood risk, and there was simply no time to spend on the matter as the inquiry had already overrun.

The court referred to rule 16 (1) of the TCP Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, which govern the procedural aspects of planning appeals. This rule makes it clear that the inspector was to determine the procedure to be adopted at the inquiry, and rule 16(5) confers a discretion upon the inspector as to whether or not to permit cross-examination. The court held that the inspector was entitled to refuse to permit cross-examination by the claimant on the issue of the risk of flooding.

The NPPF states at para 116 that planning permission should be refused for 'major developments' in national parks, the Broads and AONBs except in exceptional circumstances where it can be demonstrated that they are in the public interest. The NPPF does not define the phrase 'major developments' but the claimants sought to rely upon the definition of 'major development' in Art 2 of the DMPO 2010 that includes 10 or more dwelling-houses. The

court was not prepared to accept that the phrase 'major development' should have a uniform meaning wherever it may appear in a policy document, procedural rule or Government guidance on town and country planning matters. It was more appropriate that the term to be construed in the context of the document in which it appears.

The grounds of a s 288 challenge can be amended after the application has been lodged – Court of Appeal – 5 July 2013

Secretary of State for Communities and Local Government v San Vicente & Anor (Rev 1) [2013] EWCA Civ 817 (05 July 2013)

An application was made under s 288 TCPA 1990 to quash a planning permission for a large housing development. A s 288 application must be made by a 'person aggrieved' within 6 weeks from the date on which the order/action was taken. The application was made within 6 weeks of the grant of planning permission, but the claimants then sought to change the grounds of challenge two and a half months after the expiry of the 6 week period.

Under CPR 17.1(2) a statement of case can be amended but only if (a) all the other parties give written consent, or (b) with the permission of the court. This is subject to CPR 17.4 which deals with amendments to statements of case after the expiry of a relevant limitation period. Under CPR 17.4(2), the court may only allow an amendment, which will add or substitute a new claim if the new claim arises out of the same facts or substantially the same facts as those originally pleaded.

The Court of Appeal upheld the High Court decision allowing substitute grounds to be made. It held that CPR 17.4 is concerned with periods of limitation such as those specified in the Limitation Act 1980 and that the six week period in s 288(3) of the TCPA 1990 is not a relevant limitation period for the purposes of CPR 17.4. CPR 17.1 (2) (b) applied to this case and the court had the power to allow the amendment, even though it raised a new case outside the statutory time limits.

Where the time for making the application has expired, defects in a Town or Village Green application can still be corrected after submission – Court of Appeal – 10 July 2013

The Church Commissioners for England v Hampshire County Council & Anor

This case concerns whether a TVG application submitted to Hampshire County Council (on 30 June 2008) under s 15(4) of the Commons Act 2006 in relation to land known as Bushfield Camp (part of which was a disused military camp) owned by The Church Commissioners for England was made in time.

The TVG application was made on the basis that the land had been used by a significant number of the inhabitants as of right for lawful sports and pastimes for at least 20 years. This use as of right was brought to an end when the Commissioners erected a fence some time in July 2003.

Under s 15 (4) of the Commons Act 2006, where the user as of right ceased before 6 April 2007 (when s 15 CA 2006 commenced) the TVG application must be made within five years of that cessation date.

The application was made on 30 June 2008 but was not in proper form. The Council allowed time for the application to be put in proper form, which was not done until 20 July 2009 – more than 12 months after the five year limitation period under s 15 (4) of the CA 2006 had ended on 13 July 2008. The Commissioners challenged the preliminary ruling of the TVG inquiry inspector that the application was made in time and valid.

Regulations made under the 2006 Act – the Commons (Regulation of Town or Village Greens) (Interim Arrangements)(England) Regulations 2007 (2007 No.457) set out the procedural details of making a TVG application. The original TVG application in this case contained one relatively trivial defect and two more substantive defects as follows:

- The map attached to the application form only showed the location of the green and did not identify the locality or neighbourhood to which the application related.
- The application failed to specify the precise date on which activities ceased; and just referred to 'a period of months during the summer of 2003'.

The court contrasted the language in the Regulations with the language used in s 67(6) of the Natural Environment and Rural Communities Act 2006, which provides that an application to extinguish rights of way under s 67 had to satisfy all the requirements of that section, stating that:

> Parliament could easily have made it clear that no extension of the 5 year limitation period was to be permitted so that if not duly made when submitted it could not be rescued unless it was put in proper form before the limitation period expired.

However, there is nothing in the CA 2006 and Regulations which prevents a TVG application from being corrected retrospectively. The TVG application was therefore made 'in time'.

The court was unsympathetic to the Commission's arguments that the Council had given the TVG claimant too much time to correct the defective application because the Commission had been aware of the application and could have pressed for an earlier resolution but it had failed to do so.

NEWS

DCLG publication on 4 June 2013 of the criteria for designating poor performing LPAs

S 1 of the Growth & Infrastructure Act 2013 gives applicants the choice of submitting planning applications directly to the SoS where the LPA has been

designated by him, provided that the application relates to major development. Between 22 November 2012 and 17 January 2013, DCLG sought views on how the proposals should be implemented – when the Growth and Infrastructure Bill was before Parliament.

On 4 June 2013, DCLG published the 'Planning performance and the planning guarantee: government response to consultation', which generated 227 responses. The Government is at pains to stress that the measure to designate is a last resort and gives applicants a choice rather then removing powers from the LPAs.

During the passage of the 2013 Act through the Lords, there was concern that the Bill neither specified the criteria for designation nor provided for the criteria to be set out in an instrument subject to a Parliamentary procedure.

In response, the Government amended the Bill to provide that the power of designation could be exercised only if a LPA was not adequately performing its function of determining planning applications and if, prior to that decision, a document setting out the criteria for designation had been formally laid before Parliament.

DCLG laid the draft designation criteria document in Parliament on 3 June (pursuant to s 62B of the TCPA 1990). It is subject to a 40-day period that ended on 13 July 2013, during which either House could have resolved not to approve it.

The performance of LPAs will be assessed on two criteria:

1) The speed of the decision making, to be assessed using the average percentage of decisions on applications for major development made:

   a) within the statutory determination period of 13 weeks; or

   b) within such extended period as has been agreed in writing between the applicant and the LPA.

   The threshold for designation is that 30% or fewer of a LPA's decisions have been made within these periods.

2) The quality of the decisions based on how many are overturned at appeal, to be measured by taking the average percentage of decisions on applications for major development that have been overturned at appeal, once nine months have elapsed following the end of the assessment period. The threshold for designation is that 20% or more of a LPA's decisions on such applications have been overturned at appeal.

Designations will be reviewed by the SoS once a year and LPAs may be added or removed from the list.

Extension of the NSIP regime to business and commercial projects

As part of a package of planning reforms intended to stimulate economic growth, provision was made in the Growth and Infrastructure Act 2013 to allow some business and commercial projects to be authorised in the same way as for NSIPs under the PA 2008.

The Government confirmed on 21 June 2013 the types of business and commercial projects that could be authorised under the PA 2008. Regulations needed to implement the changes are to be published in draft in October 2013.

Project Category	**Likely indicative threshold (set out in the consultation)**
Offices and research and development	Minimum of 40,000m gross internal floorspace
Manufacturing and processing	
Warehousing, storage and distribution	
Conference and exhibition centres	
Leisure, tourism and sports and recreation	Minimum of 100 hectares or over 40,000 seats
Aggregate and industrial minerals	Minimum of 150 hectares

Absolute eligibility thresholds will not be specified in regulations. Instead the SoS will set out indicative thresholds and other factors relevant to his decision as to whether or not the 2008 Act procedure may be used. The indicative thresholds are expected to be the same as those in the consultation document (set out in the table above) save for the minerals threshold which is expected to be increased from 100 hectares to 150 hectares. Unlike for infrastructure projects, there will be no national policy statements covering the types of projects subject to these arrangements.

The following types of business and commercial projects are *not* eligible:

- coal and oil/gas development – these were proposed for eligibility in the consultation document, but have been dropped at this stage. Shale gas extraction schemes are therefore not included, although the Government issued guidance on shale gas extraction in July 2013;
- retail led development; and
- development that includes any housing element.

There will be no compulsion to use the PA consenting route for any business and commercial schemes. The developer can request that it be used, and the SoS must then decide whether the use of the procedure is appropriate. In addition, for projects in London, the consent of the Mayor is required.

Hazardous Waste NPS designated on 18 July 2013

The PA 2008 defines nationally significant hazardous waste facilities as landfills with a capacity of more than 100,000 tonnes per year and other

treatment sites with capacities above 30,000 tonnes per year. Defra consulted on the draft NPS in 2011. On 6 June 2013, the SoS for Defra confirmed in a statement in Parliament, that he had laid the NPS for Hazardous Waste. The NPS was designated on 18 July 2013. This is the ninth NPS to be designated. The transport network, aviation and water supply NPSs have yet to be published for consultation.

Guidance on wind turbines and other forms of renewable energy

The Planning practice guidance for renewable and low carbon energy was published on 29 July 2013 by DCLG and is to be read alongside the NPPF. It will be a material consideration in planning decisions involving renewable energy. It states at para 5 that although the NPPF states that all communities have a responsibility to help increase the use and supply of green energy, the need for renewable energy will not automatically override environmental protections and the planning concerns of local communities. As with other types of development, it is important that the planning concerns of local communities are properly heard in matters that directly affect them.

The guidance addresses the following topics:

- developing a strategy to promote renewable energy in local and neighbourhood plans – these should consider the range of technologies available and where they could be accommodated;
- how LPAs should identify suitable sites (dependent on the technology involved and impacts on the local environment): '*The expectation should always be that an application should only be approved if the impact is* (*or can be made*) *acceptable*' ;
- the technical considerations which can affect the siting of renewable energy technologies, eg transport links, sources of water, predicted wind resource etc;
- how to set out criteria based policies in local plans;
- buffer zones and separation distances between renewable energy development and other land uses – LPAs *'should not rule out otherwise acceptable energy developments through inflexible rules on buffer zones or separation distances'*;
- encouraging the role of community renewable energy initiatives in neighbourhood plans and via Neighbourhood Development Orders and Community Right to Build Orders;
- the planning considerations that relate to hydropower, active solar technology, solar photovoltaic farms and wind turbines. For wind farm development, the issues identified are noise impacts, safety (fall over distances, separation from power lines, air traffic movement, MoD

operations, radar and the strategic road network), effect on electromagnetic transmissions, collision with birds/bats, impact on heritage assets, shadow flicker, the likely energy output of a wind turbine, cumulative landscape, and visual impacts.

Shale gas planning guidance published

Shale gas has been increasingly in the news following the 2013 Budget announcement of a number of measures to support shale gas exploration and production in the UK with a flurry of activity, including:

- the creation of the Office for Unconventional Gas and Oil (OUGO), the aim of which is *'to promote the safe, responsible and environmentally sound recovery of the UK's unconventional reserves of gas and oil'*;
- the House of Commons' Energy and Climate Change Committee report in April 2013 recommending that further exploratory operations be encouraged;
- the BGS/DECC published Bowland Shale Gas Study in June 2013 suggesting huge reserves of shale gas;
- publication by the UK Onshore Operators Group (UKOOG) – the representative body for the UK onshore oil and gas industry including exploration, production and storage – of a 'community engagement charter' which promises £100,000 to local communities per well site where fracking takes place;
- DCLG announcement in June 2013 that it has decided against treating large onshore gas extraction (above 500,000 cubic metres per day) as NSIPs but that this decision would be kept under review;
- a consultation by the HM Treasury on Harnessing the potential of the UK's natural resources – a fiscal regime for shale gas published in July 2013 (closing on 13 September) on a 'pad allowance' for shale gas. The proposed allowance would operate similarly to existing field allowances, by exempting a portion of production income from the supplementary charge – reducing the effective tax rate on that income from 62% to 30%; and
- Planning practice guidance for onshore oil and gas for industry, planning authorities and communities on how shale gas (and other onshore oil and gas) developments should proceed through the planning system.

The planning practice guidance provides guidance on planning issues associated with the three phases of the extraction of oil and gas (hydrocarbons): exploration, testing (appraisal) and production with planning permission required for each phase.

The Environment Agency also published a consultation draft in July 2013 entitled Onshore Oil and Gas Exploratory Operations: Technical Guidance. This document sets out the EA's requirements for developers to obtain environmental permits for shale gas operations. Consultation on the draft guidance closes on 23 October 2013.

CONSULTATIONS

Consultation by Defra on trigger and terminating events for Town or Village Green registrations

The Growth and Infrastructure Act 2013 made a number of changes to the TVG regime set out in the Commons Act 2006. Changes include the insertion of a new s 15C and Schedule 1A into the CA 2006 preventing an application for a TVG being made under s 15 (1) of the CA 2006 if any of the 'trigger events' listed occur, eg an application for planning permission. The right to apply under s 15 (1) is restored only where one of the 'terminating events' occurs against its corresponding trigger event, eg the planning application is withdrawn. The current Schedule 1A lists the trigger events as including an application for planning permission, land identified in a development plan document or in a neighbourhood plan (including draft plans), or an application for a DCO.

On the 5 July DCLG/Defra published a consultation on registration of new town or village greens – proposed amendments to Schedule 1A (Exclusion of Right under section 15) to the Commons Act 2006, seeking views on proposals to extend the trigger and terminating events to include three matters not already included in Schedule 1A, namely in relation to local development orders, neighbourhood development orders and orders under the Transport & Works Act 1992.

The proposals apply to England only. The consultation closed on **19 August 2013**.

Consultation on proposed route for phase two of HS2 launched by DfT on 17 July 2013

On 17 July 2013 the DfT launched a consultation on the proposed detailed route for Phase 2 of HS2 (the Y-shaped part of the project set to link the West Midlands to Manchester and Leeds), which will run until **31 January 2014**. A series of public information events will accompany the consultation from mid-October.

The consultation seeks views on:

- the route and its sustainability impacts;
- whether there should be additional stations on either fork of the Y;
- how the capacity on the existing railways network released by HS2 can be used; and
- the opportunities to introduce other utilities (eg water and electricity apparatus) along the line of the route to maximise the benefits of the investment.

REPORTS/PUBLICATIONS

Guidance under the PA 2008 on award of costs – DCLG – 12 July 2013

The 'Awards of costs: examinations of applications for development consent orders – guidance' has been published by DCLG and sets out the general principles for awards of costs in relation to DCO examinations under the PA 2008.The guidance sets out the general principles of the award of costs and gives examples of events and types of behaviour likely to result in an award of costs being made e g late submission of documents or late compliance with any requests from the Examining Authority. Additional guidance is also given where compulsory purchase powers are being sought in a DCO. The aim of the guidance is essentially, to ensure that all involved in the examination of a DCO application behave in a reasonable and acceptable way.

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