

Bircham Dyson Bell

The Planning Bill and Nationally Significant Infrastructure Projects: An introduction and legal overview

26 November 2008

Presented by
Robbie Owen
Partner and Head of Major Projects

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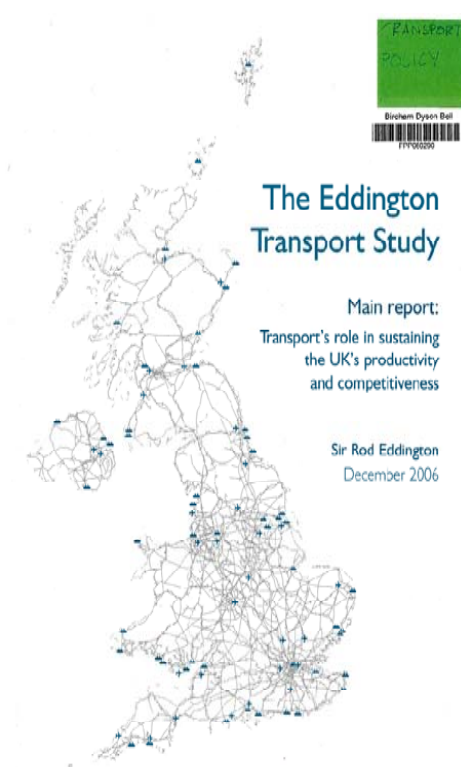
Overview

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- 4 The Infrastructure Planning Commission (IPC)
- 5 Implications for major projects



Background - Eddington

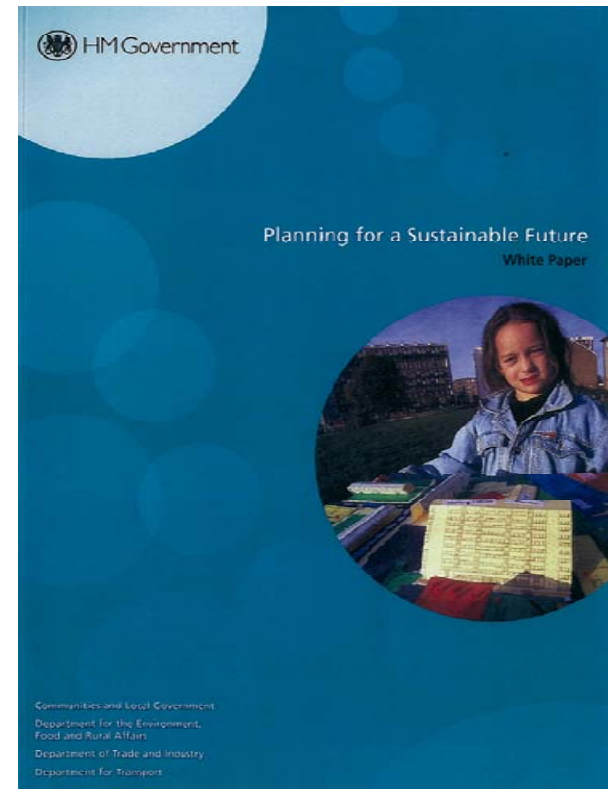
- The Eddington Report – December 2006:
 - reduce the complexity and uncertainty of the planning system
 - proposed unified consents regime for national projects
 - self-contained and up to date process
 - separate national policy and decision-making on individual projects





Background - Legislation

- May 2007 Planning White Paper
- Planning Bill



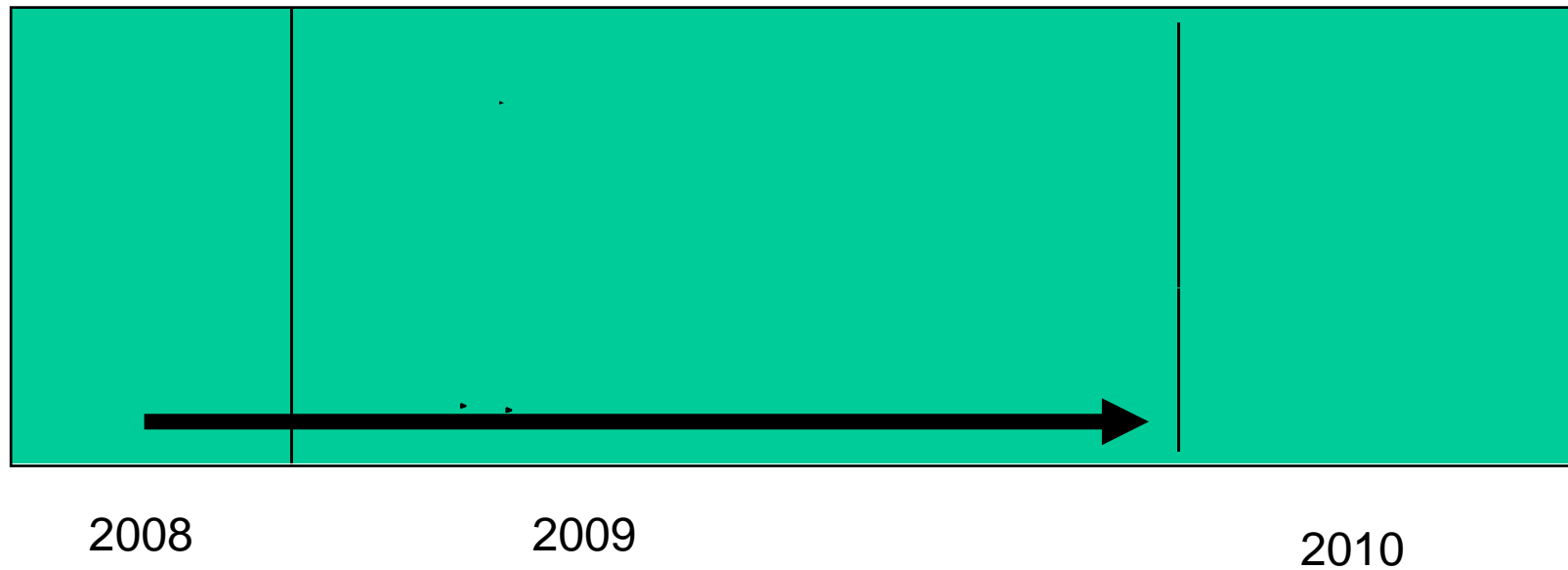


Background - Implementation

- **2 November:** Advert for IPC Chair in Sunday Times
- **Spring 2009:** IPC Chair and Chief Executive to be appointed
- **Later in 2009:** IPC to begin advising applicants
- **During 2010:** IPC to begin determining applications



Implementation Timetable





The Planning Bill- An overview

- New and compulsory development consent regime for development in England that is/forms part of a “nationally significant infrastructure project”(NSIP)
- Nationally significant infrastructure projects with specific characteristics and thresholds in the fields of:
Energy, Transport, Water, Waste, and Waste Water
- New independent Infrastructure Planning Commission (IPC) to examine and decide applications when there is a relevant national policy statement (NPS) in force



National Policy Statements

- NPSs will cover –
 - need for infrastructure
 - relative weight to be given to impacts
 - action to mitigate impacts
 - location – criteria or specific places
 - reason for policies
- Statutory requirements for sustainability appraisal, consultation and parliamentary scrutiny



National Policy Statements

- Consultation in 2009
- Designated in early 2010
 1. Energy
 - 2 – 5. Energy (non – nuclear)
 6. Nuclear
 7. Ports
 8. Airports



9. National Networks (strategic road and rail network and rail freight interchanges)
10. Water
11. Waste



Nationally Significant Infrastructure Projects (Transport):

- Highways (trunk roads, etc.)
- Airports (10,000 pax)
- Harbour facilities (500,000 TEU)
- Railways
- Rail Freight Interchanges (60 ha)



- Clause 33 sets out what is no longer required for a NSIP as a result (e.g. planning permission and LBC)
- Disapplies Order-making procedures (e.g. TWA, Harbours Act)
- But some omissions/restrictions, e.g.:
 - Railway closures
 - Byelaws
 - Criminal offences
 - Operational consents
 - Special category land



The IPC

- An independent body comprised of experts of “considerable standing and experience”
- The IPC will decide applications in accordance with the relevant NPS (exceptions includes adverse impact outweighing benefits)
- Local authorities well knitted into the Bill in terms of consultation
- The IPC’s inquiry would focus on site-specific matters but complications (e.g. EIA and alternatives, new evidence/changes in circumstances)



- IPC will make a “*Development consent order*”
- Development consent orders may include, e.g., powers re:
 - Compulsory acquisition of land
 - Stopping up or diversion of highways
 - Amendments/repeals or revocations of local Acts
- So largely a “unified consents regime” for the first time



IPC decision-making process

- Generally a panel of between 3 and 5 Commissioners would be appointed to determine an application
- Smaller projects: single Commissioner and Council
- Presumption against oral evidence and cross - examination

Time limits:

- Examination within 6 months and final decision within a further 3 months



Implications for major rail projects: conclusion

- Early days! But –
- Vital importance of contributing to formulation of National Policy Statements
- Benefits of a simpler and unified consents regime but some limitations
- Quicker and more cost effective?
- Cultural issues re: consultation, project management, front loading, application preparation and written representations



- Smaller schemes, e.g. local transport projects:
 - Existing consents regime continues but
 - Government to explore devolution to local authorities so, e.g., TWA applications could be determined by the LPA

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T: 020 7783 3425

E: robbieowen@bdb-law.co.uk

