

Insights

ENERGY SECURITY: CAN THE PLANNING SYSTEM DELIVER?

May 05, 2022

SUMMARY

Fundamental weaknesses in the UK's energy security revealed by recent global events created a catalyst for urgent government review and prompted publication of the Energy Security Strategy in April 2022. The planning system will play a critical role in delivering this ambitious Strategy, but it also has the potential to derail it. Changes are proposed to overcome the planning obstacles, but will they be enough to keep the Strategy on track?

Before the current energy price shock triggered by post-Covid demands and Russia's invasion of Ukraine in February 2022, domestic energy policy was already in the spotlight. However, the focus was on how energy supply needed to transition to clean energy in response to the climate emergency, rather than the robustness of energy security.

The direction of travel was set out in a range of policy documents, most recently in the Energy White Paper in December 2020 (please see this [BCLP blog](#)), the consultation on revisions to the Energy National Policy Statement in September 2021 (please see this [BCLP blog](#)) and the Net Zero Strategy in October 2021, all of which primarily addressed the changes needed to the UK's energy supply to transition to net zero.

However, fundamental weaknesses in the UK's energy security revealed by more recent global events created a catalyst for urgent review and prompted the publication of the Energy Security Strategy in April 2022. Whilst the direction of travel remains largely the same, the ambitions have been accelerated.

What's new?

The Energy Security Strategy in essence requires an increase in and acceleration of capacity from all sources of 'home-grown' energy, but with the greatest proportion coming from new offshore wind and nuclear energy projects and an increase in North Sea oil and gas production.

In brief, the Strategy requires more energy to be sourced from:

- **nuclear power stations** - up to 8 new nuclear reactors (instead of the 1 currently planned) to provide up to 24GW by 2050, which is three times more than today and representing up to 25% of our projected electricity demand;
- **offshore wind** - 50GW with up to 5GW from floating offshore wind by 2030 compared to the previous target of 40GW with 1GW of that from floating offshore wind – so a move from the challenging '40 by 30' to the (arguably heroic) '50 by 30';
- **hydrogen** – up to 10GW by 2030 with 50% from 'green' hydrogen compared to the previous target of 5GW;
- **low carbon UK oil and gas** – this will continue to be the foundation of the UK's energy security with energy fields of the North Sea given a new lease of life during the transition to net zero;
- **onshore wind** – no specified target – clearly there had been much hope in early 2022 of a policy shift to support onshore wind, but that hasn't materialised;
- **solar power on both roofs and ground** - up to 70GW of solar by 2035.

Improvements to the network infrastructure to support the expanded capacity are also factored into the Strategy. However, no major new energy efficiency measures are proposed, instead the Strategy summarises previously announced policies. Critics have pointed to the Strategy as dealing with only one part of the energy conundrum.

The role of planning

These targets are nothing short of ambitious given that the development and deployment of energy projects currently takes years, and often decades. Critics argue that the Strategy overlooks onshore wind and solar power, which are the cheapest and fastest sources of energy, and hence could have an expanded role.

The Strategy attempts to resolve some of the obstacles to delivery, with the planning and consenting regime identified as one of the major ones. Some adjustments to the planning rules are proposed but will they be enough to support delivery of the targets?

Solar

Only limited changes are proposed for solar developments (to strengthen policy in favour of ground-mounted schemes on non-protected brownfield sites and co-location with other functions, and to amend the permitted development rights for rooftop solar).

Offshore wind

More detailed amendments are proposed for offshore wind projects to reduce the consent time from the current position of up to four years through amendments to the Planning Act 2008, to strengthen national policy, to introduce nature-based design standards and for environmental considerations to be made at a more strategic level.

Nuclear

The delivery of new nuclear power stations probably presents the biggest challenge, and whilst the government says it will “radically change” how it delivers new nuclear projects it is less specific on whether this will involve any changes to the planning rules. However, it does plan to work with regulators to “understand the potential for any streamlining or removing of duplication from the consenting and licensing of new nuclear power stations” so changes may be in the pipeline. A long term siting strategy will be developed to identify the locations of these projects and a new entity called the ‘Great British Nuclear Vehicle’ will be established this year tasked with helping projects through the development process.

Network Infrastructure

To support improvements to the network infrastructure, updates to the NPS are promised that will recognise a new blueprint for the strategic network infrastructure needed in the planning system to increase project certainty and speed up delivery.

Comment

Energy projects are notoriously expensive, complex, long and contentious. Most energy projects identified in the Strategy are likely to be delivered through the DCO/NSIP regime. However, ambitions to accelerate and improve this regime have been on the government’s agenda since November 2020, with a target to cut timescales by 50% announced in the National Infrastructure Strategy (please see this [BCLP blog](#)). Work is already underway to explore how this can be done and an initial consultation was carried out (in August 2021) seeking views.

However, perhaps one of the more significant obstacles that could derail these ambitions is the potential for judicial and statutory challenges to new policy and consenting decisions and the risk of consequential delays. Whilst there is no shortage of political will to achieve energy independence, we expect there will also be no shortage of potential challengers. The balance between what we all pay for our power (paired with the moral question of where our energy comes from given global events), sits alongside the needs of our planet and its ecosystems.

The government has made no secret of its frustrations in the way its decisions can be legally challenged, and it launched an independent review of administrative law in July 2020 to examine whether there was a need for judicial review reform. However, the review concluded that no radical changes were needed, instead it made only cautious and limited recommendations to changes in

judicial powers. This means government decisions are still susceptible to challenge and scrutiny by the courts in largely the same way as they always have been.

Whilst the consultation process on reforms to the NSIP regime has already started, whether this translates into changes that reduce consenting timescales in a meaningful way to deliver the Energy Security Strategy remains to be seen. However, the government is going to have tread carefully to ensure that any changes introduced to the planning system are lawful, as we expect potential challengers may be lining up ready to intervene should there be any perceived defects in the way decisions and changes in this area are made.

If you would like to talk to the market leading real estate sector team at BCLP, about energy and infrastructure planning or any of the issues above, then please contact James Parker or Clare Eccles.

RELATED CAPABILITIES

- Planning & Zoning

MEET THE TEAM



James Parker

London

james.parker@bclplaw.com

[+44 \(0\) 20 3400 4132](tel:+442034004132)



Clare Eccles

London

clare.eccles@bclplaw.com

[+44 \(0\) 20 3400 4267](tel:+442034004267)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.