

Insights

AND THEN THERE WERE TWO – THE SECOND UK ‘BUSINESS AND COMMERCIAL’ DCO PROJECT IS IN PLAY

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How the UK plans and delivers its major development is crucial to making sure the country gets what it needs. This article explores the latest developments and the use of the new consenting regime.

OVERVIEW

In 2008 the UK Government put in place a new consenting regime for ‘nationally significant infrastructure projects’ (‘NSIPs’), such that instead of planning permissions or potentially hybrid bills, a new tool known as a ‘Development Consent Order’ (or ‘DCO’) could be sought.

Since that time many major (and less major) infrastructure schemes have successfully secured their DCOs, and subject to some ongoing changes the new regime has been broadly welcomed as a success.

In reviewing the regime, the Government consulted on extending the regime to allow for business and commercial (‘B&C’) schemes to be consented by DCO. Following that [consultation](#), the regime was extended to allow such schemes to be consented by DCO, where the applicant chose to take that route.

The types of major projects which can benefit from this new consenting regime are:

1. Major office use.
2. Research and development of products or processes.
3. Manufacturing / Industrial processes.
4. Warehousing / Storage or distribution of goods.
5. Conference centres.
6. Exhibition centres.

7. Sports related development.

8. Leisure facilities.

9. Tourism developments.

Retail-led schemes aren't permitted to benefit from the regime, nor are housing schemes, albeit recently (in the summer 2015 UK budget) there has been a shift in respect of housing, and the Government stated that it is going to "legislate to allow major infrastructure projects with an element of housing to apply through the Nationally Significant Infrastructure Regime (NSIP)". Our blog "[Planning reforms announced by UK Government – some headlines for infrastructure](#)" explores this further.

SO WHAT BUSINESS AND COMMERCIAL SCHEMES ARE IN THE SYSTEM NOW?

Since the widening of the regime in 2013, the Secretary of State had only made one 'direction' (in 2014) that a B&C scheme should be subject to the DCO regime which was for the London Paramount scheme in Swanscombe, for an entertainment resort, to include:

"an entertainment street, water park, theme park, events space, sporting facilities, events and conference, creative spaces, service buildings and a staff training academy, as well as approximately 5,000 hotel rooms and substantial improvements to transport infrastructure. This will include a transport link Ebbsfleet International Station with the resort, a new direct road connection from the A2, a coach station and river bus facilities."

Additionally, in the last few days (September 2015), a second B&C project has been directed to be considered under the DCO regime. This project is the International Advanced Manufacturing Park (IAMP) promoted by Sunderland City Council and South Tyneside Council. The proposed park would be in the region of 100 hectares, providing over 5,200 jobs, and is targeting "the automotive, off-shore and other hi-tech industries".

So what are the tests to be met?

Well the [B&C policy statement](#) sets out relevant factors:

- whether a project is likely to have a significant economic impact, or is important for driving growth in the economy;
- whether a project has an impact across an area wider than a single local authority area;
- whether a project is of a substantial physical size; or

- whether a project is important to the delivery of a nationally significant infrastructure project or other significant development.”

Other factors include:

- “• whether a project is likely to require multiple consents or authorisations, and which, in consequence, would benefit from the single authorisation process offered by the nationally significant infrastructure regime;
- whether the project is related to a nationally significant infrastructure project being brought forward at the same time and therefore would benefit from the scheme being considered as a single application through the 2008 Act regime.”

In respect of Paramount and the Sunderland IAMP scheme, the Government has decided that they meet the criteria. Applications for each scheme and the public examination will follow in due course.

WHY SEEK A DCO RATHER THAN PLANNING PERMISSION?

Whilst the traditional route of seeking planning permission may be right for some projects, three factors of the DCO process stand out for B&C projects:

1. certainty of timescales for a decision (a decision must be made within 1 year of the start of the public examination, which in effect means about 16 months from the date of application).
2. the ability to include compulsory purchase powers in the DCO (rather than promoting a standalone CPO, and this is examined as part of the overall DCO examination).
3. the ability to wrap almost all consents into a single overarching DCO (from planning permission, to listed building consent, to stopping up orders and many more).

The BCLP team has been engaged in some of the biggest DCOs in the UK, as well as having the market leading real estate practice in the UK – so if you would like to discuss any aspect of the above then please don't hesitate to get in touch.

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