The Planning Act 2008 Regime: Has It Worked?

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Introduction

The Planning Act 2008 received royal assent on 26 November 2008 and ushered in a new era for the planning and consenting of large infrastructure projects. This paper examines whether, after nearly 10 years since that date, the regime can be considered to have "worked" and what still might be changed to improve it.

Brief history of the development of the regime and the reasons for it

The history of the regime can be traced back to the lengthy process of obtaining consent for a fifth terminal at Heathrow Airport. This was the latest and most extreme in a long line of infrastructure projects which involved a large number of separate consents and a considerable amount of time and expense. The public inquiry opened in May 1995 and closed in March 1999.

Shortly after the inquiry closed, on 18 May 1999 the Minister for the Environment, Transport and the Regions, Dick Caborn MP, issued a consultation paper entitled "Modernising planning: streamlining the processing of major projects through the planning system".[1] This introduced the concept of National Policy Statements to avoid discussing the need for a project at the time an application was made for it, and also proposed a Parliamentary approval process.

On 26 July 2001, the Secretary of State for the Environment, Transport and the Regions, Steven Byers MP, made a speech at the Institute for Public Policy Research where he decried the system at that time as a "banquet for barristers". On 20 November that year, the day that he issued his decision on Heathrow Terminal 5, he also announced a package of measures to streamline projects, repeating his "banquet for barristers" claim and adding "a lawyers' free lunch" for good measure.

By July 2002, following Parliamentary scrutiny of the proposals, the Parliamentary authorisation idea was dropped, although National Policy Statements would be introduced "when legislation allows". This first attempt at wholesale reform of the system rather fizzled out, and only gave rise to minor changes via the Planning and Compulsory Purchase Act 2004.

The 2005 Labour Party manifesto again pledged to improve the planning regime, although not in very specific terms. Following that election, three reviews were commissioned:

- the Stern Review on the Economics of Climate Change (commissioned July 2005, reported October 2006);
- the Barker Review of Land Use Planning (commissioned December 2005, reported December 2006); and
- the Eddington Transport Study (commissioned December 2005, reported December 2006).

These were followed by a white paper "Planning for a Sustainable Future" in May 2007 that in turn led to the introduction of the Planning Bill in 2007. The bill was enacted as the Planning Act 2008 on 26 November 2008.

The main features of the new regime are as follows:

- a common consenting regime across different types of infrastructure, for the first time since authorisations were via private Acts of Parliament—previously, each type of infrastructure

[1] See *https://api.parliament.uk/historic-hansard/written-answers/1999/may/18/major-projects* [accessed 9 October 2018].

had its own consenting regime, such as the Electricity Act 1989 and the Transport and Works Act 1992;
- policy considerations including need are separated from individual applications by being contained in National Policy Statements and then not able to be the subject of representations on applications;
- a largely written process with a few hearings rather than a long public inquiry, with limited opportunities for cross-examination at hearings;
- a more active tribunal through whom representations are made—an inquisitorial rather than adversarial process;
- fixed timescales for most, although not all, stages of the process, in particular the examination and decision stages;
- decisions to be made by an independent body, the Infrastructure Planning Commission ("IPC"); and
- a consent that is invariably (although doesn't have to be) a statutory instrument, the Development Consent Order ("DCO")[2].

Has the regime worked? What does "worked" mean?

To ascertain whether the regime can be considered to have worked so far, one must of course decide what "worked" means. This is a somewhat subjective exercise, but I proffer the following features and then analyse them. I also consider whether further improvements could be made to the regime in each area, and whether other regimes (principally the Town and Country Planning Act 1990 regime) could benefit from the relevant features of the Planning Act 2008 regime:

- Stability: Has the regime remained reasonably constant over time?
- Certainty: Do promoters know what is likely to get consent before making their applications?
- Attractiveness: Where they have had the option, have developers chosen to use the regime or to avoid it?
- Timings: Have decisions been delivered as efficiently as envisaged?
- Validity: Have projects and decisions survived legal challenge?
- Participation: Do the public get a fair say?
- Delivery: Are projects being built that have used the regime?

Stability: Has the regime remained reasonably constant over time?

An example of a regime that has not remained constant over time, resulting in questions about its efficacy and an official review into possible reform, is that of the Community Infrastructure Levy, ironically also introduced by the Planning Act 2008. The Community Infrastructure Levy Regulations[3] were originally made in 2010, but have been altered by amendment regulations in 2011, 2012, 2013, 2014, 2015, and 2018. That does not seem like the hallmark of success. So, what about the Planning Act 2008's main new regime, the DCO regime?

The regime was introduced by a Labour Government in 2008 and was switched on for applications on 1 March 2010, just over a month before Gordon Brown went to Buckingham Palace to ask the Queen to dissolve Parliament for a general election. That election resulted in a Coalition Government between the Conservatives and Liberal Democrats, with Conservative Secretaries of State in charge of three of the

[2] Although this term is commonly used for the instrument, and for the regime itself, the only time it is used in the Planning Act 2008 itself is in Sch.6, when providing for changes to such orders.
[3] Community Infrastructure Levy Regulations 2010 (SI 2010/948).

relevant departments (Communities and Local Government, Transport and the Environment, Food and Rural Affairs) and a Liberal Democrat heading up the Department of Energy and Climate Change.

The Conservatives pledged in their manifesto to:

> "abolish the unelected infrastructure Planning Commission (IPC) and replace it with an efficient and democratically-accountable system that provides a fast-track process for major infrastructure projects. We will … provide transitional arrangements for projects already before the IPC to ensure that these projects are not disrupted or delayed."

The Liberal Democrats also pledged to:

> "Abolish the Infrastructure Planning Commission and return decision making, including housing targets, to local people."

The Coalition Government did abolish the IPC, via the Localism Act 2011, probably the main change the regime has undergone. This added three months to every application as the Planning Inspectorate, who was now charged with examining applications, had three months to issue a recommendation and then the relevant Secretary of State had another three months to make a decision, where previously the IPC did that in three months in one go. In practice, the IPC only made one decision before it was abolished, for the first accepted application—the Rookery South energy from waste project. Other than adding three months to the process, the "abolition" was not as significant as it sounds—applications continued to be examined by many of the same staff and inspectors as before, in the same building in Bristol, with a transition that was barely perceptible to the outside world.

Despite the rhetoric of the manifesto pledges, the rest of the regime remained much the same with a few minor tweaks. Since then the only significant changes have been to what projects can and don't have to use the regime (see further below). The Government did decide later to establish an independent body to assess infrastructure needs, and although the National Infrastructure Commission in 2016 was originally going to be underpinned by legislation in the end it was not. It is a different body to the Infrastructure Planning Commission as it is concerned with proposing policy rather than handling and deciding applications. It does mean that the original idea of the government proposing policy and then a non-political body deciding applications has been reversed.

One area that has changed a fair amount is the setting of the thresholds that trigger the requirement to use the regime, as follows:

- electric line threshold—raised;
- highway threshold—raised;
- railway threshold—raised;
- onshore wind—removed altogether;
- waste water transfer—added in;
- geological disposal of nuclear waste—added in;
- business and commercial projects—added in optionally;
- housing—added in as an element of another project;
- water projects—due to be expanded; and
- shale gas production—due to be added.

Three commonly-used types of project have had their thresholds raised, and one has been removed from the regime altogether for political reasons. The remainder are additions or expansions—the Government, at least, generally has faith in the regime.

On stability, then, the regime can be regarded as having "worked" as it has remained largely intact from its inception.

Could the regime be made more stable? A small degree of change should be welcome to allow the regime to improve in the light of practice, and to reflect changing external factors—not allowing change at all would be the ultimate in stability but would clearly be undesirable as being completely unresponsive. The benefits of not allowing further changes are therefore outweighed by the disadvantages and I would say that the right balance has been struck.

Could other regimes benefit from this one in this area? The Town and Country Planning regime is 28 years old and has not been at all stable, being constantly amended by successive Secretaries of State.[4] New changes are introduced often before it has been established whether the previous ones have worked or not. More stability would no doubt be welcome in the planning sphere, but as the "front line" act in this area it is unlikely.

Certainty: Do promoters know what is likely to get consent before making their applications?

The more certain that one is going into a consenting regime about what will get consent and what won't, the better for all concerned, as it minimises wasted time and resources expended by many parties. A consenting regime should not be a rubber-stamping exercise, of course, but its workings should be as transparent as possible. I have heard some in the planning sphere say that certainty is bad for business, as they trade on the margin of uncertainty, but this paper is more concerned with projects being built.

The cornerstone of the regime that is the suite of National Policy Statements ("NPS") has dramatically improved certainty, although NPSs have not always been in place on time and are getting out of date.

NPSs address three main topics, all of which increase certainty: whether and to what extent projects of the type they cover are needed, what impacts applicants should address in their applications, and how decision-makers should consider those impacts in reaching a decision. This means that developers can assess their applications against these criteria before making them, and theoretically should know in advance what applications will and will not obtain consent to a significant degree.

There is also a legal obligation on decision-makers to decide applications in accordance with any relevant national policy statement,[5] and to conduct wide-ranging consultation before making an application, which should help establish the likely issues of objection and allow them to be addressed in advance as far as they can be.

This will not fully eliminate uncertainty, of course, because examining inspectors and those affected by projects can bring up other issues (both to those mentioned in the NPS and to those brought up during consultation). There is still the temptation from some potential objectors either to "keep their powder dry" and raise concerns only later, in front of the inspectors, or not to provide suggestions for ameliorating the project in the belief that this may be seen as watering down an in principle objection. As experience of the regime has grown, these issues have lessened, particularly among statutory bodies who have dealt with a number of projects; less so amongst those experiencing a project for the first time.

Coverage of projects by NPSs has been patchy. The "National Networks" NPS for road, rail and rail freight projects was not designated until January 2015, nearly five years after applications were able to be made for those projects, by which time 15 applications for highway, railway or rail freight DCOs had been made. An application was made for a tidal lagoon project, when the relevant NPS (EN-3—Renewable Energy) did not cover tidal lagoons (and still doesn't). For such projects, the uncertainty was greater than those that did have an NPS in place.

NPSs are also getting out of date. When the regime was introduced, it was a stated aim that NPSs would be reissued every five years, but at the time of writing, 9 out of 11 NPSs were more than five years old,

[4] We learn that if one wishes to insert 27 sections between s.61 and 62, the 27th is called s.61Z1.
[5] Planning Act 2008 s.104(3).

with plans afoot only to replace one of them, the Nuclear Power NPS. There is an increasing risk that the declarations of need in NPSs are no longer accurate, and that new technologies have emerged that are either not covered at all or mean the assessment that should be undertaken should be different. An example would be coal-fired power stations, which are—along with all other types of electricity generation—urgently needed according to the Overarching Energy NPS and yet it is government policy to phase them out by 2025. A solar plant has undergone its statutory consultation and yet the Renewable Energy NPS does not cover this technology. Furthermore it is quite likely that particular drafting of parts of NPSs has caused unnecessary conflict and anxiety and would benefit from consultation on changes.

It is also the case that conflict with specific wording of NPSs has resulted in applications being refused. Here are two examples.

The Preesall gas storage application was originally refused (albeit this was successfully overturned following judicial review proceedings) mainly on the ground of non-compliance with para.2.8.9 of EN-4 Gas Infrastructure, on the level of geological assessment that had been provided. The Navitus Bay offshore windfarm application was refused mainly on the ground of non-compliance with para.5.8.14 of EN-1 on harm to heritage assets such as World Heritage Sites. Thus having an NPS is not necessarily a panacea.

The statistics on refusal are low, however. Out of 70 decided applications, 66 (over 94%) were granted (counting Preesall amongst those) and four were refused. That contrasts with 88% of all planning applications being granted, and around 32% of planning appeals being allowed.[6]

On certainty, then, the regime would appear to have worked so far.

Could it be made more certain? Yes, by keeping NPSs up to date—the older they become the less certain they become as they start falling out of line with policy, technology and practice.

Could other regimes learn from this one? The concept of policy being declared in advance is already well-known in the conventional town and country planning system via local plans, but requirements for pre-application consultation are still virtually non-existent. Although s.61W was inserted into the 1990 Act by the Localism Act 2011, requiring specified classes of application to undergo consultation, the only applications that have been brought in have been onshore windfarms—in an attempt to discourage them.

Attractiveness: Where they have had the option, have developers chosen to use the regime or to avoid it?

The regime is compulsory for projects above specified size thresholds for each type of infrastructure, for example for electricity generation onshore it is an output of 50MW or more. Thus the only way a project can avoid the regime is to be designed to be below the relevant threshold. On the other hand the regime is optional for projects below the threshold, and developers can apply to use it.[7] It is also option for "business or commercial" projects.

There is evidence of electricity generation projects being designed at 49MW or even 49.9MW, which would appear to be to avoid the DCO regime. A quick search yields a 49.9MW solar farm in Norfolk, a proposed one of similar capacity on Anglesey, and a 49.9MW battery storage project in Essex (it not yet being settled whether battery storage comes under the DCO regime or not).

On the other hand, a few projects have opted into the regime: the Silvertown Tunnel and the Triton Knoll Electricity Connection to name two.

On balance, though, I think that more projects have sought to avoid the regime than have tried to come within it. Why? This is based on anecdotal evidence but factors could be:

[6] Government and PINS figures, Q1 2018.
[7] Via Planning Act 2008 s.35.

- the regime is seen as more expensive to pursue than alternatives, particularly for smaller projects; even when the cost is similar, the spend profile requires earlier expenditure than usual due to the front-loaded nature of the regime;
- if a project is supported by the local authority and has all the land it needs, the alternative is likely to be faster as well as cheaper;
- those who have not used the regime before are wary of it; and
- consents are seen as difficult to change.

On this measure, I don't think the regime has completely worked so far. Could it be improved? Yes, probably—some suggestions being:

- making the process easier for first time users;
- making the post-grant change process easier; and
- demonstrating comparative cost and timings for similar projects using different regimes are similar (if they are!).

Could other regimes benefit from this one's approach? Most other regimes are compulsory and difficult to avoid through reductions in size, so attractiveness does not really arise as a factor. The various alternative and interim ways to get some form of planning permission that have been recently introduced (e.g. brownfield land registers, permission in principle) are optional but have not really been around long enough to decide whether they are attractive enough.

As a side note, I think that the relative infrequency of use of this regime has created something of a divide between professionals in all four of the JPLC disciplines who either use the regime a lot or hardly at all. Some companies in other fields have changed their offerings to meet the demands of the new regime, such as providing security at statutory consultation events, or recording facilities at hearings. That suits people like me who are on the inside just fine, but arguing against my own interests perhaps some capacity-building is required. This might go some way to increasing the attractiveness of the regime if more people routinely use it.

Timings: Have decisions been delivered as efficiently as envisaged?

One of the main selling points of the regime is its (relatively) fixed timescales. Applications can be broken down into the following stages:

- a maximum of 28 days for PINS to decide whether to accept the application;
- a short gap while the applicant prepares for the representation period;
- a minimum 28-day representation period (how much longer being up to the applicant);
- a gap of a few weeks while PINS and the applicant prepare for the examination;
- a maximum of six months for the examination;
- a maximum of three months for the inspector(s) to prepare a recommendation; and
- a maximum of three months for the relevant Secretary of State to make a decision.

The median length of time from application to decision has been 500 days, or 16.4 months, with 45 out of 70 decision within a month of that.

The last three periods above can be extended, but require a statement to be made to Parliament. Only one examination stage has been extended—for the Brig y Cwm energy from waste project—although the application was withdrawn before the extension was reached (I think PINS therefore don't count it). Only one recommendation stage has been extended—for the Kentish Flats offshore wind farm extension—but only for nine days. Before July 2016, only one decision period had been extended—for the Able Marine

Energy Park—by seven months. So far so timely. But of 14 decisions issued since July 2016, six have been delayed, from three days to 14 months.

This is clearly a worrying trend, where one time period has gone from being highly predictable to much more unpredictable. Each of the six projects concerned had its own reasons, but cumulatively they suggest that the Secretaries of State are not quite as keen to adhere to their deadlines as the Planning Inspectorate. This does threaten a loss of confidence in the regime, as its timeliness is one of its main advantages, giving predictability to those planning the phasing, and just as importantly, funding and financing, of projects.

Could the regime be improved? Yes, decisions should return to being routinely made within three months in well over 90% of cases.

Could other regimes learn from the Planning Act 2008 regime here? Yes, and in some cases they are beginning to do so. Fixed timescales are being introduced for compulsory purchase orders, although Town and Country Planning Act applications still only have recommended rather than compulsory timescales. There is a world of difference between a recommended or target timescale and a statutorily fixed one. Indeed, there is ample evidence that DCOs get priority from decision-makers over other types of consent (including non-material amendments to DCOs) due to their fixed timescales.

Validity: Have projects and decisions survived legal challenge?

Another test of the success of a regime is whether decisions made under it have been subject to, and have survived, legal challenge.

By their very nature, nationally significant infrastructure projects are controversial. Their benefits are inevitably regional if not national, and their impacts are inevitably very localised. While a project's overall benefits may outweigh its adverse impacts, for those living close to it the reverse may very well be the case.

For that reason it is not surprising that decisions have been challenged, but the regime has survived all but one of such challenges.

There have been two main types of challenge, those to a decision to grant or refuse a DCO application, and those to secondary decisions. Challenges may only be made within a six-week period of either the designation of a National Policy Statement or the grant or refusal of a DCO application, they cannot be made in the period leading up to that moment. It is not quite clear when the period starts—a decision to endorse the recommendation of the Airports Commission was dismissed as caught by that restriction, even though the draft Airports NPS had not yet been published at that point.

Secondary decisions

Two National Policy Statements have been challenged—the Nuclear Power NPS and the Airports NPS. The former reached the Supreme Court on the ground of not notifying neighbouring states about potential transboundary effects, but was ultimately unsuccessful. The latter (six) challenges had not been heard at the time of writing. A challenge to the grant of the Thames Tideway Tunnel DCO tried to reopen the debate on the Waste Water NPS that had been designated some years earlier, but this was unsuccessful.

Another area of challenge has been to decisions to allow compulsory access to land for surveying purposes, which are possible under s.53 of the Act. These were both for prospective nuclear power station projects (Hinkley Point C and Sizewell B) but were unsuccessful.

A third has been to a decision to award costs, on the A30 Temple to Higher Carblake Improvement, also unsuccessful. I am not aware of any other "satellite" litigation.

Challenges to DCO application decisions

Out of 70 decisions made on DCO applications (65 approvals and 5 refusals), 10 have been challenged. All the challenges to approvals were unsuccessful. Of the two challenges to refusals, one (to the Preesall Gas Storage project) was successful and the refusal was quashed and subsequently reversed, and the other (to the Mynydd y Gwynt onshore windfarm) was unsuccessful. Depending how you look at it, either the developer was successful in all but one case, or the challenges were unsuccessful in all but one case.

I therefore conclude that the regime has a high degree of validity and can tick this measure of success.

Could this regime be improved? This regime, probably not, but legal challenges, particularly to the higher courts, still take longer than they should. The most recent challenge to be heard by the Court of Appeal was to the decision to refuse the Mynydd y Gwynt onshore wind farm application. The application decision was made on 20 November 2015, the judgment in the High Court was given on 19 October 2016, and the judgment in the Court of Appeal was given on 22 February 2018. I don't know the ins and outs of why that took so long, but two and a quarter years seems excessive.

Can other regimes learn from this one? Some of this is related to the certainty of having National Policy Statements in place, see above. Another feature is the "ouster" provision whereby challenges are limited in when they can be made. This might stop interim challenges to planning applications, although I don't detect that such things are currently widespread.

Participation: Do the public get a fair say?

This measure is often overlooked, particularly by those who complain that the planning system is too slow. In my view, it is a vital ingredient that the public affected by a project are not only able to have a say, but feel that they have been heard. If they feel they have been listened to and treated fairly then they are more likely to accept the eventual decision, even if they don't agree with it. Although decisions are (now) made by democratically elected Secretaries of State, public acceptability is still very important as it affects the long-term relationship of the developer to its neighbours as the project is constructed and operated. A complete feeling of powerlessness could lead to lower or higher level civil unrest.

The public do have several opportunities to participate in the consideration of an application for development consent, arguably more than in other regimes. Not only is there compulsory pre-application consultation, where all those with affected land interests are required to be notified, as are the local community likely to be affected by the construction or operation of the project, but there are the same requirements of notification once an application has been accepted so that representations can be made (and they can be made by anyone, even if not directly notified—this is the only consenting regime to my knowledge that requires notices in national newspapers[8]).

Once an examination is under way, there is an opportunity to require a "compulsory acquisition hearing" by anyone whose land is affected, and an "open floor hearing" if anyone at all asks for one. Note that there is not necessarily one per request, several requests for one type of hearing can be combined.

Still on the plus side, the "inquisitorial" approach by the inspector or panel of inspectors examining applications often involves them putting local residents' concerns to applicants directly—a source of some frustration to applicants. There is thus a slight levelling of the usual inequality of arms between developers and affected individuals.

On the minus side, although all materials are published on the Planning Inspectorate's website, so everything is transparent and accessible, there is often a huge quantity of material to consider, which can be off-putting to many and requires some skill to navigate.

[8] *The Times* and *The Guardian* seemingly the favourites.

It also remains the case that there is likely to be a significant inequality in availability of funds and hence access to representation and experts, although there are occasionally some very well-resourced objectors to applications. Planning performance agreements are available under this regime but there is no obligation to enter into one on either side, and while local authorities represent their electors, they are one level removed from them.

Verdict: Despite its subject-matter, the regime has on the whole been accepted by the public. There are reasonably good opportunities for participation, and inspectors often take on issues raised by members of the public to make sure they are addressed. Inspectors' Reports contain ample evidence that individual objections have been considered.

Could more be done? It is unlikely that public funds will be made available to even up the remaining inequality of arms, but organisations such as Planning Aid could be made more known (and could have more public funding themselves).

The National Infrastructure Planning website is a lot better than it was when the regime first got going, but could still be made more accessible to first-time users, perhaps with a guide that is itself easy to find wherever one starts from on the website.

Can other regimes learn from this one? Planning inspectors are not inquisitorial when considering town and country planning appeals, but perhaps they could be of more assistance to lay objectors, given that funding is just as unlikely to be available to other regimes.

The Planning Inspectorate's appeals website is quite different from the national infrastructure planning one, and perhaps they could be made more similar. Possibly coloured by my infrequent use of the appeals website and frequent use of the infrastructure planning one, the latter seems easier to use to me.

Delivery: Are projects being built that have used the regime?

Last and by no means least, in fact perhaps most importantly, have nationally significant infrastructure projects that have been granted consent actually been built and are they in operation? All the previous factors are of naught if nothing gets built at the end.

In 2017, the National Infrastructure Planning Association published the results of research it commissioned into "Effective National Infrastructure: Balancing Detail and Flexibility—Through Planning to Delivery".[9] As part of this research, a table was produced (starting on p.188 of the technical report) of what stage consented projects had reached at the time of writing of that report (1 November 2016). Of 50 projects then consented, only 7 were thought to have been built, and only 1 of those was an energy project (an extension to the Kentish Flats windfarm). A further 13 were thought to be under construction, 11 had planned construction dates and the remaining 19 had no public date on which construction was expected to start. Two had definitely been cancelled (the Blyth biomass project and the South Hook combined heat and power project).

Although generally large infrastructure projects take a long time to build, that is not very encouraging for a regime that allowed applications to be made seven years and eight months earlier.

Many if not most of the reasons for delay or cancellation may well be independent of the planning regime. However, there are possible planning-related reasons, for which there is some evidence.

First, a number of DCOs have been changed since they were granted. There are four possible ways to change a DCO:

- Through a "correction" order, for all but the most minor changes. Of 66 granted DCOs, 32 have had at least one correction order. The proportion has been increasing—30 of the last 50 DCOs have been corrected, and 8 of the last 10.

[9] See *https://www.nipa-uk.org/news/NIPA-Insights-Research-REPORTS-LAUNCHED* [accessed 9 October 2018].

- Through a "non-material change", for still fairly minor changes that do not (according to guidance) create additional environmental effects, newly affect Natura 2000 sites nor involve new landowners subject to compulsory acquisition. There have been 12 such changes granted, and a few more applications are in progress.
- Through a "material change", for more significant changes (e.g. triggering one of the issues above). No applications have been made in this category, to my knowledge.
- Through a new application, since the changes are so great that the existing permission is too far from what is now contemplated. No applications are sufficiently related to existing permissions to satisfy this category, to my knowledge.

It is telling that so many correction and non-material change applications have been made, and also that no material change applications have been made. The former statistics suggest that DCOs are too inflexible to respond to changes that have become necessary or desirable for whatever reason. That may not be the result of "the regime" in the sense that it needs to be changed, but developers may need to explore more creative ways of drafting DCOs that allow flexibility while retaining a clear process for approving details, and may need to withstand demands to specify projects more precisely at the DCO stage. In deciding DCO applications, the Government routinely prevents drafting that provides for the ability for a DCO to be changed, given that a change process already exists, but there is nothing to stop a DCO creating flexibility by not fixing certain elements of a project as long as it is clear how they will be fixed later on.

The latter statistic suggests that the change process for material changes is putting prospective applicants off. That is somewhat surprising, because at least it has some statutory deadlines (shorter than those for a whole DCO), whereas the correction and non-material change processes do not, meaning they have ranged from 7 to 310 days to be determined. However, embarking on a process that is about 2/3 of the full DCO process for something that could still be quite minor is likely to be off-putting nonetheless.

In my view, the regime does not get a tick in this last most crucial box; not nearly as many projects have been built as might expected to have been built by this time.

How can this be improved? As the NIPA research recommends, there should be more focus on deliverability when examining applications and taking decisions on them, and recognition that detailed design will not be decided by the time a consent is sought or given. This is still not recognised enough—although it may be a misperception that when an examining authority asks a question about detailed design that has come from a particular representation, the examining authority necessarily endorses the concern when that may not be the case.

The change process should be further simplified to raise the thresholds for minor changes and make it clear when parts of the "material change" process would be dispensed with, as they can be.

Can other regimes learn from this one? Not if this one is not performing, no. And the Government has already commissioned Sir Oliver Letwin MP to examine why housebuilding at large sites is so slow. His preliminary view: housebuilders only tend to release new houses into the market at a rate (the absorption rate) that does not lead to a decrease in prices.

Conclusion

In conclusion, then, upon examining all these factors, has the Planning Act 2008 regime worked? My answer is that it has delivered a number of consents efficiently (with some but not a great deal of further improvement being possible), but not enough of these are being converted into operational projects. That is where the focus of improvement should be directed, and I, and I am sure many others, would be happy to assist the Government in further analysing the blockages and providing recommendations.