FAST TRACK WIND FARMS?

The Government's proposal and possible pitfalls

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On 7 April 2022, the Government published its new *British energy security strategy*.

The Strategy proposes to accelerate the deployment of wind, new nuclear, solar and hydrogen, whilst supporting the production of domestic oil and gas in the nearer term

Notably, amongst other things, it is stated that the time for obtaining consent for offshore wind farms will reduce from four years to one year. (We will come to other matters, such as the controversial questions of onshore wind and additional nuclear provision, in due course.)

What happens now?

Offshore wind farms are invariably *nationally significant infrastructure projects* requiring an order granting development consent (a "DCO") under the Planning Act 2008.

The DCO process is front-loaded. All relevant matters shoud be identified and addressed through an extensive pre-application consultation process.

Following this, there is a formal examination by the Planning Inspectorate, a report to the Secretary of State with a recommendation and a decision from the Secretary of State. This should take around 1 year.

The procedure and timetable are set out in the 2008 Act and Infrastructure Planning (Examination Procedure) Rules 2010/103.

The proposal

The Strategy commits to *'establishing a fast track consenting route for priority cases where quality standards are met, by amending the Planning Act 2008 so that the relevant Secretary of State can set shorter examination timescales'.*

Offshore wind farms providing renewable energy seems likely to constitute priority case. However, it is less clear what quality standards would need to be met and how compliance would be determined.

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Legal proceedings as pitfalls

A major source of delay in any DCO or other planning process is legal proceedings. Therefore, any successful fast track consenting route must ensure the DCO is properly considered or risk causing further, significant delays to projects as a result of legal challenges.

There are numerous examples of the Courts being astute to ensure that relevant matters are properly determined by decision-makers in a planning context. Last year, we wrote about the High Court quashing the DCO for the *Vanguard* offshore wind farm as as result of the Secretary of State failing to consider the cumulative landscape and visual effects of both *Vanguard* and its sister *Boreas* project.

It remains to be seen how a fast track process would adequately ensure that such matters are lawfully dealt with. Nationally significant infrastructure projects are, by definition, significant; wide-ranging impacts fall to be considered in the pre-application process, at the examination and by the Secretary of State.

It may be that the Government intend for Parliament to prescribe a faster timetable that would satisfy the Courts that a lower level of scrutiny is to be expected in the examination process. However, there is a risk that time taken off the examination process will be time added on to the pre-application process. If the Planning Inspectorate has less time to explore matters, it is likely to fall to the promoter to ensure it is explored early on so as to avoid a legal challenge. If so, the overall timetable for a DCO may not change as dramatically as one may have hoped.

The aim of accelerating renewable energy generation is undoubtedly laudable but, as ever, the devil is likely to be in the detail. Further detail is likely to be provided in draft amendments to the 2008 Act. Watch this space.

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