

Insights

PROPOSED PLANNING POLICY FOR DATA CENTRES, GIGAFACTORIES AND BIOTECH LABS

Nov 11, 2024

SUMMARY

Consultation closed in late September on proposals to align national planning policy with the Government's industrial strategy for key growth industries. Government's response is awaited. In the meantime, what Planning changes are likely for delivering data centres, gigafactories, laboratories, freight and logistics?

REALISING THE FUTURE

In 1990s Star Trek, Captain Jean-Luc Picard would order "*make it so*", and his starship's crew would immediately bring about the desired futuristic endeavour. 2024 Budget statements by the new Government suggest they wish to do the same. Land-use planning policy in England, alas, is much wordier and doesn't always achieve such immediate and dramatic results.

Planning policy does not exist in a vacuum. The Government recognises that the 2008 crash woke everyone up to how the nation has struggled to find direction in a global economy since its rapid de-industrialisation in the 1970s and 1980s. And in a world of artificial intelligence and self-driving electric vehicles the British economy is not yet on the cusp of a Star Trek future – but we do not seem light years off and Government believes national policy needs to get with programme.

KEY GROWTH INDUSTRIES

So what are the next "big things" Government is looking to encourage?

- Data centres are needed to host networked computer servers that store and process data at scale. A lack of data centre capacity is one of the biggest obstacles to widespread AI deployment.
- Gigafactories are large-scale manufacturing facilities ("gigas" in ancient Greek meaning "giant"). Particularly for rechargeable batteries that go into electric vehicles.

- Laboratory capacity is needed for Britain’s burgeoning life sciences sector, working on things like precision medicines and quantum technologies (in turn connected with AI and server capacity).
- A national network of storage and distribution infrastructure remains needed as it ever was to sew together all kinds of local, regional, national and international operations.
- All of that needs electricity network grid connections and (optimally) renewable energy and battery energy storage systems to power it.

TOOLS AT GOVERNMENT’S DISPOSAL

Government planning proposals at this stage to unlock consents for these kinds of schemes boil down to two key measures:

- First, making the National Planning Policy Framework, the “**NPPF**”, more supportive of them.
- Second, enabling the schemes to follow the most proportionate route to consent. Either by way of a standard planning permission under the Town and Country Planning Act 1990 or a development consent order (a “**DCO**”) under the Planning Act 2008.

THE NPPF

The NPPF sets out the Government’s overarching planning policies for England. Planning law requires that applications for planning permission be determined in accordance with local authorities’ development plans, unless material considerations indicate otherwise. The NPPF must be taken into account in preparing those development plans, and is a material consideration in the planning balance which local authorities and the Planning Inspectorate (on appeal) reach in deciding applications. So the NPPF does not bind decision-makers to any particular outcome but their decision has to sit rationally within it. The NPPF cannot override local politics. Even so, the more supportive the NPPF is of a development which follows its principles, the more likely it is that planning permission will be granted by a local authority or on appeal.

Government therefore proposes to make the NPPF more explicit in recognising the need for local plan policies and decisions to support proposals for new or upgraded facilities and infrastructure that, in turn, support the knowledge, creative, high technology and data-driven sectors required to make England a Clean Energy Superpower. It is proposed that an updated NPPF will say that decision-makers must ensure that supply chains, transport innovation and decarbonisation are considered in terms of the locational requirements of the storage and distribution sectors. Local authorities will be expected to identify commercial sites for these key growth industries in their local plans, giving confidence to purchasers of the sites in question, and positively consider them in planning decisions where they are of local, regional or national importance.

OPTING INTO THE DCO REGIME

The consultation also considers allowing data centres, gigafactories and laboratories into the DCO regime. Instead of the local authority deciding your application for planning permission, you would apply to the Secretary of State to direct that you could instead apply to the Government Department in question for a DCO under the Planning Act 2008.

The DCO regime was created to provide a fast track one-stop-shop for nationally significant infrastructure projects (“**NSIPs**”), initially aimed at energy, transport, waste, waste water and water schemes above certain thresholds. The scope was increased to include a range of business and commercial schemes to be directed into it if a developer requested and could show the scheme was of a substantial size, had a significant economic impact or was important for driving growth. That included office use, research and development of products or processes, an industrial process or processes, storage or distribution of goods, conferences, exhibitions sport, leisure and tourism.

Few schemes have chosen to opt into the DCO regime. There are significant upsides. The process waters down local politics with a fixed 6-month (largely written) examination presided over by the Planning Inspectorate. Land assembly issues can be overcome by compulsory purchase powers not dependent on the local authority. The highway authority becomes an important statutory consultee instead of the ultimate arbiter on the grant of relevant streets powers.

That said, the DCO process is ultimately aimed at major schemes, requires early design freeze, significant frontloading of work and more resourcing and project management than an application to the local authority. Key to the large percentage of DCOs granted has been a set of national policy statements which largely remove issues around whether the principle of the scheme is acceptable. None of those national policy statements cover business and commercial schemes or, indeed, data centres, gigafactories or laboratories. Those types of developments would rely on the standard policy matrix in the Town and Country Planning system, which even with a more supportive NPPF is still not as supportive as national policy statements tend to be of what they cover.

Job-generating business and commercial schemes tend to have local authority support in any case. Few have therefore pursued a DCO. The same is likely to apply to data centres, gigafactories, and laboratories. Even so, being able to opt into the DCO regime could unlock a number of schemes with particular challenges and sends a message that the planning process is open to accommodating them one way or another.

WILL IT WORK?

This might ultimately all sound like it is just rejigging bureaucratic process. And arguably much of it is. None of the NPPF changes can definitively override the weight of local politics weighing on the minds of planning committees, made up of Councillors who knock on doors for your vote every four years. Nevertheless, it will make it harder for Councils to say no without risking appeals, and cost

implications, for unreasonable decisions. Appropriately tweaking routes to consent can save schemes all important time and money.

Fundamentally, Government wants these schemes of the future to come forwards and could play a significant role itself. DCOs are determined centrally by relevant Ministers. In the Town and Country Planning system, Ministers can “call-in” key applications for planning permissions and determine these themselves, instead of leaving them to local authorities, whether developers request it or not. They can already “recover” planning appeals and decide them instead of a planning inspector. If developers can keep the overall balance between the benefits and disadvantages of their schemes on an even keel, these changes to the NPPF give Ministers more scope within a rational planning balance to grant planning permissions where “*the potential gain for the regional and national economies warrants it*”, as the Deputy Prime Minister put it when the current Labour Government came to power. Conservative Ministerial Statements made great play of not interfering with “local decision-making”. That position is changing.

More planning consents are not the only thing needed to unleash a high-tech future. Government needs to back a real local market for the electric cars whose batteries gigafactories are supposed to be producing. The 2024 Budget maintained tax incentives to purchase electric cars, commits to funding charge point rollout and offered £2 billion towards transformation of the automotive sector. There was a renewed commitment to phasing out new cars that rely solely on internal combustion engines by 2030 and all new cars sold being zero emission from 2035. No doubt more will be needed but, with likely global tariff rises on the horizon, where will the cash come from? Government will also need to unlock technical obstacles like renewable energy generation and data centres, which require linking up to the electricity grid, often encountering delays in connection dates. If those practical angles work out, maybe Government can “*make it so*” after all.

RELATED PRACTICE AREAS

- Planning & Zoning

MEET THE TEAM



Sheridan Treger

London

sheridan.treger@bclplaw.com

[+44 \(0\) 20 3400 3642](tel:+442034003642)



Alexander Hadrill

London

alexander.hadrill@bclplaw.com

[+44 \(0\) 20 3400 4740](tel:+442034004740)

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.