

Challenging New Infrastructure

Richard Turney

Role of new infrastructure

- Incentives for construction
- Range of different projects
- Devolved and UK decision making

Three stages to infrastructure planning

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- Strategic/plan-making
- The consent regime
- Challenging the consent

Strategic/plan making stage (1)



- See e.g. National Transport Plan in Wales; National Policy Statements under Planning Act 2008
- Consultation issues
- Strategic Environmental Assessment
- Habitats Regulations Assessments
- Equality impacts

Strategic/plan making stage (2)



- Funding issues: procurement and state aid
- Challenges to policy
 - *R (Hillingdon LBC) v Secretary of State for Transport* [2010] EWHC 626 (Admin)
 - *R (Buckinghamshire CC & others) v Secretary of State for Transport* [2013] EWHC 481 (Admin)

Consent regimes: Hybrid Bills



- Hybrid Bills in Westminster
 - See e.g. Crossrail Act; HS2 Bill; Severn Barrage Bill?
 - Standing Order 27A
 - Petitioning
 - Potential for Factortame relied
- Acts of the Assembly where within legislative competence
 - See Standing Order 26A
 - Supreme Court scrutiny under s 112 Government of Wales Act
 - See by comparison Forth Crossing Act 2011

Hybrid Bills – case studies

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- Crossrail
 - Process
 - Public participation
- HS2

Consent regimes: Development consent orders



- Planning Act 2008
- Pending applications in Wales for windfarms (onshore and offshore); Swansea Bay tidal lagoon; Wylfa nuclear power station; new gas fired power stations
- Pre-application procedure
- Examination & role of NPSs
- Effect

Development consent orders – case studies



- Hinkley Point C
 - Public participation
 - Examination process
- Rookery Pit
 - Difficulties in compulsory acquisition
 - Special Parliamentary procedure

Consent regimes: other regimes

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- Planning applications
- TWA Orders
- Role of other necessary consents (e.g. permitting)

Legal challenges



- Restrictions on statutory challenges: time limits and scope
- Funding challenges: PCOs
- Likely grounds of challenge
 - Process/fairness
 - Material considerations & reasons
 - EIA
 - SEA
 - Habitats

Discussion: tactics

- Early participation?
- Engagement with promoter
- Community support & consultation fatigue
- What to challenge: decision to proceed or consent or both?
- Role of public law in infrastructure consents
- Devolution issues