

Planning Bill

Nuisance Immunity – Clause 151

During its passage through Parliament, an amendment has been added to the Planning Bill¹, which looks as if it will exempt the major infrastructure developments² covered by the Bill from nuisance legislation. Clause 151 was tabled by Clive Betts MP on 25th June, and accepted by Secretary of State Hazel Blears, who said “I believe that replicating the defence of statutory authority against nuisance claims would be useful, as the current procedures work well.”

(This currently applies to criminal and civil nuisance under the Railways Act). We understand that the original amendment tabled applied only to transport facilities, but as incorporated into the current draft Bill it would appear to encompass all major infrastructure developments.

Clause 151 states:

‘No proceedings, whether criminal or civil, in nuisance³ and no civil proceedings in respect of the escape of things from land other than proceedings for breach of statutory duty may be brought in relation to development, works or operations authorised by an order granting development consent.’

An amendment was also added requiring the proposed Infrastructure Planning Commission to request a local impact report in writing from potentially affected local authorities as part of the consideration of applications. While this new Clause 58 is welcome, it affords no protection once development is underway. The Bill would appear to give no other protection from impacts to either populations or the wider environment. The blanket exemption of Clause 151 would appear to remove any safeguard for communities that might be affected by unforeseen consequences of development or poor management, or any accessible remedy for impacts that might arise at any stage in the lifetime of the development.

Our Concerns

1. Clause 151 as currently worded appears to remove long established precedents set by case law that have to date afforded protection to communities from the impacts of development on health and local environmental quality. These would include dust, noise, odour and (where applicable), light impacts.
2. We can see no requirement that permission given would be subject to reasonable steps being taken to mitigate any effects on the local environment and neighbouring communities.
3. It is unclear how this immunity for developments covered by the Bill will affect the enforcement of the nuisance requirements of the Environmental Protection Act, light nuisance requirements of the Environmental Protection Act as amended by the Clean Neighbourhoods and Environment Act (so far as they currently apply) and nuisance under sec. 222 of the Local Government Act.
4. If all controls on potential impacts are to be established at the planning stage how and by whom is control to be enforced in breach? To whom do the public go if their quality of life and health are being affected?

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5. How will existing infrastructure schemes be dealt with in regard to any applicable nuisance actions in comparison with new, comparable schemes that would seemingly benefit from the exemption?
6. Does the proposed clause effectively cause a potential conflict with the European Convention on Human Rights⁴? Article 8 entitles everyone to the right to respect for their private and family life and home, and their possessions. And section 6 of the Human Rights Act 1998 provides “that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.” This was borne out by the case of *Peter Maric v Thames Water Utilities*⁵.

Our View

This apparent blanket exemption is highly irresponsible, particularly in view of the wide range of developments covered by the Bill. It affords communities no redress from potential impacts of smoke, dust, odour, noise, light, effluvia or deposits that may arise during the lifetime of these developments – all of which are manageable by proper planning and operation. While we accept that some short term impact is an inevitable and acceptable consequence of any development, we are dismayed that the proposed blanket immunity from nuisance action shows scant regard for the potential for impact on the health, quality of life and amenity of any communities who are unfortunate enough to be in proximity to any of the developments proposed. Most of the developments listed should not cause local environmental problems – if they do they should be accountable. We urge the Government to reconsider the inclusion of this Clause, and/or include robust provision for protection of the health, amenity and local environmental quality for communities at risk of adverse impact.

Progress of the Planning Bill

The Bill has passed through readings in the Commons and Lords and reaches Lords Committee stage 6 – 16 October.

Environmental Protection UK Action

We plan to lobby for the Planning Bill to provide adequate protection for people from any ongoing substantial impacts on their health and quality of life from nationally significant infrastructure projects.

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Notes

1. Planning Bill <http://services.parliament.uk/bills/2007-08/planning.html>

2. Developments Covered

The 'nationally significant infrastructure projects' covered by the Bill are:

- a. the construction or extension of a generating station;
- b. the installation of an electric line above ground;
- c. development relating to underground gas storage facilities;
- d. the construction or alteration of an LNG facility;
- e. the construction or alteration of a gas reception facility;
- f. the construction of a pipe-line;
- g. highway-related development;
- h. airport-related development;
- i. the construction or alteration of harbour facilities;
- j. the construction or alteration of a railway;
- k. the construction or alteration of a rail freight interchange;
- l. the construction or alteration of a dam or reservoir;
- m. development relating to the transfer of water resources;
- n. the construction or alteration of a waste water treatment plant;
- o. the construction or alteration of a hazardous waste facility.

3. Section 79(1) of the Environmental Protection Act 1990, as amended, defines the following statutory nuisances:

- a) any premises in such a state as to be prejudicial to health or a nuisance;
- b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
- c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance (from private dwellings only);
- d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- e) any accumulation or deposit which is prejudicial to health or a nuisance;
- f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
- fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
- fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- g) noise emitted from premises so as to be prejudicial to health or a nuisance;
- ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street;
- h) any other matter declared by any enactment to be a statutory nuisance.

4. ARTICLE 8 of the European Convention on Human Rights

Everyone has the right to respect for his private and family life, his home and his correspondence.

There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Human Rights Act 1998 – section 6

5. In the judgment *Peter Marcic -v- Thames Water Utilities Limited* (Court of Appeal 7 February 2002) the issue of whether a statutory undertaker owes duties of care to individuals separable from the exercise of their statutory duties was examined, and the implication that a statutory undertaker may become liable to pay compensation to individuals whose common

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law and human rights are infringed was dealt with. This is not the first claim brought against a sewerage undertaker in respect of damage caused by discharge from overcharged sewers. Dealing with the claim under the Human Rights Act, the Court of Appeal concluded that Thames Water had failed to persuade it that a previous judgement was wrong to hold that Thames had infringed Mr Marcic's human rights. The Court of Appeal commented that where an authority carries on an undertaking in the interests of the community as a whole, it may have to pay compensation to individuals whose rights are infringed by that undertaking, in order to achieve a fair balance between the interests of the individual and the community.

A similar admission of a right to compensation for infringement on property was made in July 2008 when Lincolnshire Valuation Tribunal conceded that the construction of a neighbouring windfarm "had had a significant detrimental effect on the appellants' quiet enjoyment of their properties." And awarded them a reduction in council tax.

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