

The Planning Act 2008: An Investigation into its Historical and Neoliberal Origins

Thesis submitted for the degree of Doctor of Philosophy

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December 2022

Abstract

The Planning Act 2008 introduced a new method of providing legal consent for the construction of major infrastructure projects. It addressed criticism of the existing process over deficient government policy and undefined application requirements. It provided a definition of nationally significant infrastructure projects (NSIPs) to be subject to the Act, established a procedure for parliament to designate National Policy Statements (NPS), and established the Independent Planning Commission (IPC) to examine applications under the Act (although this was abolished by later legislation).

Writers on planning characterised the Act as neoliberal in a pejorative sense. The purpose of this research is to determine the validity of these assertions so that decisions on the further use of the Act's procedures can be made on logical grounds rather than being influenced by adverse, and possibly misplaced, criticism.

The work seeks a definition of neoliberalism and reviews how it has been treated in the literature, seeking definitions to judge the Act against. Three 'characteristics' of neoliberalism were identified: reduced democratic accountability; centralising or decentralising intentions; and business empathy and orientation. An investigation into these characteristics and the historical background of the Act was carried out using a single-phase convergent technique. Particular attention was paid to the parliamentary passage of the Act.

The research concludes that the Act continues a line of development stretching back several centuries, and is not overtly neoliberal, although there are nuances in this assessment. Operating to enable development irrespective of promoters' identity, it supports business interests. Democratic control is retained at a national level, with parliamentary processes developed to ensure NPSs are owned by Parliament, and decisions made by accountable politicians: the role of neoliberalism did not concern legislators. An effective, certain and time-limited consenting system has resulted, albeit neoliberalism appears to have had a normative influence in its production.

Dedication

To my parents,

Trevor Lewis Rees and Gladys Mary Rees,

who always believed in education,

with grateful thanks.

Acknowledgements

Firstly, my sincere thanks to my supervisors, Dr. Neil Harris and Dr. Crispian Fuller for their guidance and help in producing this work. Their forbearance in dealing with an uneducated and rather recalcitrant engineer has been exemplary and is very much appreciated. Thanks, too, to my internal reviewer, Prof. Richard Cowell, for his helpful and insightful suggestions.

My thanks are also due to the many university staff who have helped me, especially to Ruth Leo and Jonathan Jones.

I must also record my thanks to the people who agreed to be interviewed for this work. They gave generously of their time and knowledge and added valuable insights and great enjoyment to the process.

I am fortunate to have had a working life shared between two wonderful professions, where the willingness to help colleagues is an essential part of the culture. In the world of civil engineering, among very many who have helped me, Dennis Powell and David Thursfield were at the forefront, while among planners Pauleen Lane, Annie Coombs and Frances Fernandes deserve especial mention.

My family have been in turn bemused and amused by my late return to academia, but they have never been anything other than immensely supportive. My son Eifion deserves special praise for his totally professional and most effective checking of the text, for which I am very grateful.

My final thanks go to my wife Mary-Anne, who has been encouraging, supportive and all the other things that a wonderful wife could be during what have been some difficult years. None of it would have happened without her, and without her none of it would have been worth doing.

Thank you all.

Table of Contents

Abstract		i
Dedication		ii
Acknowledgements		iii
Table of Contents		iv
Chapter 1 Introduction		1
1.1	The Planning Act 2008	1
1.2	Origins	4
1.3	The Act in Operation	5
1.4	Neoliberalism and the Act	7
1.5	The Research Question	15
1.6	The Structure of the Thesis	18
Chapter 2 The Literature of Infrastructure and Neoliberalism - Defining Terms		20
2.1	Introduction	20
2.2	Infrastructure	21
2.2.1	Definitions	21
2.2.2	Nationally Significant Infrastructure and the Planning Act 2008	25
2.2.3	Conclusions	29
2.3	Neoliberalism	29
2.3.1	The Need for a Definition	29
2.3.2	The Origins of Neoliberalism	30
2.3.3	The Development and Growth of Neoliberalism	33
2.3.4	Attempting to Define Neoliberalism	35
2.3.5	The Spread of Neoliberalism	40
2.3.6	Neoliberalism in Modern Britain	45

2.3.7	Conclusions	47
Chapter 3	Seeking Neoliberalism: the Search for a Useable Definition	51
3.1	Introduction	51
3.1.1	Overview	51
3.1.2	The Need for a Proper Understanding of Neoliberalism	52
3.1.3	Academic Literature and the Planning Act 2008	53
3.2	Planning	55
3.2.1	Introduction	55
3.2.2	The History of Planning	56
3.2.3	Planning and Infrastructure	57
3.3	Planning and Neoliberalism	58
3.3.1	Planning after 1979	58
3.3.2	Planning in Neoliberal Times	59
3.3.3	Conclusions	64
3.4	Significant Infrastructure Planning in Academic Literature	64
3.5	Discussion	69
3.6	Conclusions	72
Chapter 4	Research Design and Methodology	74
4.1	The Research Question	74
4.2	Ontology and Epistemology	77
4.3	Areas of Investigation	79
4.4	Methodology	80
4.5	Literature Review	83
4.6	Historical Review	84
4.7	The Planning Bill in Parliament	86
4.8	Parliamentary Scrutiny	91
4.9.	Interviews	92

4.10	Ethics	95
4.11	Reflections	96
4.12	Conclusions	97
Chapter 5	The Historical Context of Infrastructure Consenting	99
5.1	Introduction	99
5.2	Beginnings	102
5.3	The Rise of Town and Country Planning	102
5.4	Origins of Infrastructure Planning	106
5.5	The Development of Infrastructure Consenting	109
5.6	Planning After 1979	113
5.7	Gestation of the Planning Act 2008	114
5.8	Conclusions	122
Chapter 6	The Planning Act in Parliament	124
6.1	Introduction	124
6.2	House of Commons Second Reading Debate	126
6.3	House of Commons Committee Stage	130
6.4	House of Commons Report Stage and Third Reading Debate	136
6.5	House of Lords	137
6.6	Summary	141
6.7	Localism Act	144
6.8	Secondary Legislation	148
6.9	Conclusions	152
Chapter 7	Democratic Accountability	154
7.1	Introduction	154
7.2	Parliamentary Process	156
7.3	National Policy Statements and Parliamentary Oversight	159

7.4	Designating National Policy Statements	161
7.4.1	Energy NPSs	163
7.4.2	Airports NPS	164
7.5	Discussion	166
7.6	Conclusions	170
Chapter 8 Centralisation and Decentralisation		175
8.1	Introduction	175
8.2	Origins of Centralisation in Planning	179
8.3	Devolution	182
8.4	A Historical Perspective of Centralisation	185
8.5	A Centralising Tendency?	190
8.6	Centralisation and National Need	195
8.7	Conclusions	199
Chapter 9 Business Empathy and Orientation		200
9.1	Introduction	200
9.2	Business Interest and the Legislature	202
9.3	Lobbying Organisations and Planning	206
9.4	Infrastructure Ownership	213
9.5	Landmark Inquiries	220
9.6	The Reasons for Change	223
9.7	Conclusions	225
Chapter 10 Insights from Makers, Users and Commentators		228
10.1	Introduction	228
10.2	Interviews	229
10.2.1	Themes	229
10.2.2	A Neoliberal Measure?	231
10.2.3	The Effect of the Localism Act 2011	235

10.2.4	The Origins of the Act	236
10.2.5	General	237
10.3	Interview Conclusions	239
10.4	The Wider View	241

Chapter 11 Discussion and Conclusion 246

11.1	Introduction	246
11.2	Historical Context	250
11.3	Neoliberal Indicators	252
11.3.1	Democratic Accountability	252
11.3.2	Centralisation and Decentralisation	254
11.3.3	Business Empathy and Orientation	258
11.4	A backdrop of Neoliberalism?	260
11.5	Practicality and the Act	262
11.6	Answering the Research Question	267
11.7	Future Research	276

Tables

Chapter 5

5.1	Parliamentary Hybrid Acts Relating to Infrastructure Since 1980	121
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Chapter 6

6.1	House of Commons Second Reading Debate Ranking of Themes	131
6.2	House of Commons Second Reading Debate Origins of References	132
6.3	House of Commons Committee Stage Oral Hearings Ranking of Themes	134
6.4	House of Commons Committee Stage Business Sessions Ranking of Themes	134
6.5	House of Commons Committee Stage Written Submissions Ranking of Themes	134

6.6	House of Commons Report Stage Ranking of Themes	136
6.7	House of Commons Third Reading Debate Ranking of Themes	137
6.8	House of Lords Second Reading Debate Ranking of Themes	139
6.9	House of Lords Committee Stage	139
6.10	Ranking of Themes House of Lords Report Stage	140
6.11	Ranking of Themes House of Lords Third Reading Ranking of Themes	140
6.12	House of Commons / House of Lords 'Ping-Pong' Ranking of Themes	140
6.13	The Occurrence by Parliamentary Stage of Neoliberal Indicators and Other Themes in the Parliamentary Passage of the Planning Act 2008	142
6.14	House of Commons and House of Lords Localism Bill Occurrence of Themes	147

Chapter 7

7.1	NPS Designation: Start and Completion Dates	162
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Appendix 1

A.1	National Policy Statements: Designation and Review Dates	317
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References and Bibliography **278**

Appendices **312**

1	The Planning Act 2008	313
2	Planning Legislation 1900 -2022	331
3	Morphet and Clifford's Recommendations	336

4		Sample Letter to Prospective Interviewees and Potential Interview Questions	341
5		List of interviewees	343
6		School of Geography and Planning Ethics Committee Submission and Approval	344
7		Planning Bill 2008 Analysis of Parliamentary Debates etc. Full Tables	353
8		Statutory Instruments Referenced in The Planning Act 2008 As Amended	373
9		Statutory Instruments relating to the operation of the Planning Act 2008 As Amended	376
10		Private Correspondence	378
	10.1	Home Builders Federation 17.3.21	378
	10.2	CPRE 31.3.21	379
11		National Policy Statements - Commentary on Designation Procedures	396

Chapter 1 Introduction

1.1 The Planning Act 2008

The planning system in England and Wales was subject to substantial changes in the years following the 1979 general election, continuing into the era of the Labour government after 1997. The last legislative measure in this succession was the Planning Act 2008 c29 (PA 2008, the Act), which introduced a new system for providing legal consent for the construction of nationally significant infrastructure projects (NSIPs). The Act defined what these projects were, setting out a new procedure for issuing consent for their construction that lay entirely outside the traditional process under the Town and Country Planning Act 1990 (TCPA). Although controversial in some of its provisions, the Act was introduced to address criticism that the existing consenting procedure created delay and uncertainty, based mainly on two long and complex planning inquiries into the Sizewell B nuclear power station (O’Riordan et al 1988) and the Heathrow Airport Terminal 5 development (Pellman 2008). The Act introduced the concept of National Policy Statements (NPSs), in which parliament establishes policy relating to NSIPs as defined by the Act. It also established a defined and time-limited procedure for the examination of NSIPs, with decisions made by an independent body, the Infrastructure Planning Commission (IPC), rather than by a government minister in the form of the relevant secretary of state. While there has been little academic analysis of the Act, some critical observations have been made about what have been described as its neoliberal intentions (Marshall 2013b; Lord and Tewdwr-Jones 2013)

The passing of the Act coincided with the 2008 financial crash. Possibly as a result of this, no NSIP scheme was brought forward until 2010, with a decision reached by the IPC in late 2011 on the Rookery South Energy from Waste Generating Station, the only decision that body ever made (PINS 2021). During the Act’s passage through parliament, it became obvious that the idea of an independent body outside the direct control of parliament

making decisions on national infrastructure schemes was contentious even among members of parliament who supported the Bill (Hansard 2007 Col. 30,55,74,100). The Conservative opposition, while generally supportive of the measure, made it plain that this aspect would be changed when they next formed a government (Hansard 2007). This occurred in 2011 with the passing of the Localism Act, which abolished the IPC and installed a Secretary of State as the decision-taker, a political role answerable directly to parliament. Since then the processes of the Act have been applied to almost 200 NSIPs (PINS 2021).

The introduction of the Act has meant the granting of planning consent for NSIPs in England – as well as in Wales and Scotland, in some instances – has been achieved using a radically different procedure from that which preceded it. The new statute abolished the leading role taken by local authorities in processing such applications and superseded the well-known processes of the various Town and Country Planning Acts, the Highways Act and other legislation that had defined and controlled infrastructure development. The Act introduced a number of new concepts into the planning lexicon: in place of ‘planning consent’ being given, a ‘Development Consent Order’ is issued that obviates the need for the granting of any other permissions before a project may proceed. In addition, the procedure under which consent is sought is now strictly defined both in terms of content and time, so that promoters know what material must be presented to an inquiry into their application, how long the inquiry will take, and when a determination will be made. While the planning inquiries into Sizewell B and Heathrow appeared to have held time at large and much effort went into attempting to identify government policy relevant to the issues raised at these inquiries, the Act addressed many of the issues raised about unclear government policy and the length of time taken both during the inquiries and in delivering decisions. It also removed the opportunity for objectors during the consenting process to speak to wider agendas. Reductions to the time spent on the inquiry stage have been balanced by additional time taken in the preparation of schemes (Marshall and Cowell 2016).

It is not intended here to give a full description of the Act, which runs to 12 Parts, 242 Clauses and 13 Schedules. Eleven of the parts deal with the revised consenting system that is the subject of this work: the twelfth part deals with establishing a Community Infrastructure Levy (CIL), which lies outside the present area of interest.

A brief description of the Act's main features is given to illustrate the process by which decisions on NSIP applications are reached. By June 2019, parliament had made some 974 changes to the Act, many of which were either a matter of 'housekeeping', dealing with minor changes to the way the Act's procedures were operated and managed, or needed to accommodate other legislation affecting the Act. Other changes made more substantial alterations to the nature of the Act and to the scope and coverage of its operation. Appendix 1 gives a brief description and explanation of the purpose and effect of each of the Act's 12 parts and the main amendments, but this is not intended to be a definitive description of the legal implications of the Act.

The types of infrastructure to be consented under the new legislation are defined in Section 14 of the Act as power stations and gas storage facilities and their connectors, motorways and trunk roads, railways, airports, dams and reservoirs. Lower limits on the size of the projects to be consented by the new procedure were also set out on the face of the Act in Sections 15 to 30, to ensure that only major projects were subject to its terms. These sections also defined the Act's geographical coverage, with all qualifying projects in England, some generating stations, transmission lines, pipelines and ports in Wales, and some cross-border transmission lines and pipelines in Scotland covered.

The Act has nothing to say about a national requirement for any particular infrastructure to be constructed, nor incentives for promoters to do so, nor anything about constraints to be placed on those contemplating such developments. The only constraints are in the nuclear power NPS (DEFRA 2012), which specifies sites where applications to construct nuclear power stations will be considered.

1.2 The Origins of the Act

The PA 2008 follows in a line of British parliamentary legislation dealing with infrastructure that reaches back to the middle-ages. The granting of powers by the crown to individuals and organisations to construct projects which interfere with the property rights of others goes back to the first efforts to improve transportation and agriculture by developing river navigation. It progressed through the facilitation of bridges, turnpikes, canals and railways, eventually to include the full range of what is now called national infrastructure. The development of this legislation, and the possible explanation of the provenance of the PA 2008 as a direct consequence of this lineage, provides one area of investigation in this work.

Prior to the introduction of the PA 2008, the approval of large infrastructure projects such as the Sizewell B nuclear power station (1987) and Heathrow Airport Terminal 5 (2001) had focused attention on perceived shortcomings in the consenting process (undefined inputs and time to reach decisions), although groups opposed to particular developments may have seen these as virtues (O’Riordan et al 1988; Pellman 2008). While it has been argued that the consenting of these projects was untypical of the process (Marshall and Cowell 2016), in some quarters they provided a focus for discontent with the planning system generally. Conservative governments from 1979 to 1997 and the Confederation of British Industry (CBI) during this period and beyond saw planning regulations generally as a hindrance to business activity (Heseltine 1979; CBI 1992b). By 1997, a total of 15 acts dealing with planning had been passed, starting in 1980 with the Local Government Planning and Land Act. Despite the changes instituted by the Transport and Works Act 1992 and, later, under the Blair government, by the Planning and Compulsory Purchase Act 2004, the particular difficulties highlighted by the Sizewell B and Terminal 5 inquiries had not been addressed. Politically, it had not been thought acceptable for the provision of nationally important infrastructure – the means by and through which a modern society operates in terms of transport, energy and communications – to be apparently held up for years in what was portrayed as an arcane planning process (Heseltine

1979; DTLR 2001b). It would need to be resolved by political action and the Planning Act 2008 was intended to achieve this. Rather than its being a measure without precedent and antecedent, this places the Act in a developmental legislative line. Yet although this continuity remains in much of the process, such as the compulsory acquisition provisions, some elements are substantially changed, and the whole process is more fully defined than previously and is time limited.

The Act was largely modelled on recommendations contained in two reports produced for the government: the Barker Review of Land Use Planning (Barker 2006) and the Eddington Transport Study (Eddington 2006). These recommended that a new procedure should be implemented for the consenting of infrastructure in their particular areas of interest, which generally coincided with that of nationally significant infrastructure. The recommendations were radical in that TCPA processes of examination and decision were to be replaced: decisions should now be based on explicitly stated government policy, should be assessed and decided by an independent body rather than by a government minister, and should follow a defined process and timetable. This appeared, among other things, to countenance a reduction in the level of democratic accountability inherent in the TCPA process, mainly as a result of the decision-maker becoming the unelected IPC (Lord and Tewdwr-Jones 2013). On this basis alone, the Act is worthy of a closer examination in academic literature than has so far been made.

1.3 The Act in Operation

The Planning Act 2008 became law on 28th November 2008 in the middle of the most serious international financial crisis for eight decades. Probably as a result of this, and the uncertainties it engendered for investment generally and infrastructure developments in particular, it was not until late 2011 that the first application was approved for a development consent order (DCO) under the provisions of the Act. This was, in fact, the only application for a

DCO decided by the IPC, because this body was abolished by the Localism Act 2011. All subsequent applications for DCOs, starting with two in 2012, have been decided by a Secretary of State. However, the process and procedures established under the Act and its attendant secondary legislation remain in place.

Up to September 2021, some 190 applications for DCOs had been processed, with the modalities of the Act operating very much as intended by the legislators. Parliament had designated NPSs for each of the 14 classes of NSIP after a meaningful procedure that demonstrated that the process is owned by the legislature rather than by the government. The time-limited examination process for applications has been properly observed, apart from in one case at the start of the national Covid-19 lockdown in 2020. In most cases, the time limit for deciding applications has been observed, although there have been increasing instances of delay in cases where the Secretary of State has sought additional information from applicants before reaching a decision.

Government's reaction to the satisfactory operation of the new legislation has been to add further areas of infrastructure consenting to those included in the original Act. On the face of the Act have been added:

- the construction or alteration of a waste-water treatment plant or of infrastructure for the transfer or storage of waste water, 9.2.2012;
- the construction or alteration of a hazardous waste facility, 6.6.2013;
- the construction or alteration of a desalination plant, 8.1.2019; and
- development relating to a radioactive waste geological disposal facility, 17.10.2019.

Other additions, to include housing associated with NSIPs and some types of business development, have been made by specific legislation. The current national need to increase energy generation – including land-based wind, solar, tidal, small modular nuclear reactors and, possibly, gas extraction through hydraulic rock fracture ('fracking') – as well as the development of battery storage, carbon capture and other environmental

improvement facilities, can be seen as areas for potential further application of the Act's procedures in delivering national infrastructure needs.

From all of this it can be seen that the Act provides a certain path to the determination of applications for DCOs for major infrastructure projects, and that government has seen the process as a suitable method of dealing with potentially contentious planning matters. On the basis that what, in terms of legislative method, succeeds is likely to be used again, the methodology introduced in the Act may possibly be applied in other areas of planning. With this in mind, an analysis of the philosophical and political origins of the Act will be valuable in providing a valid assessment of the legislators' intentions for the Act, and of its practical consequences. The general comments made by Marshall (2021, 2013b), Lord and Tewdwr-Jones (2014), and Clifford and Tewdwr-Jones (2013) identify what they consider to be the neoliberal nature of the Act. There has as yet been no comment by other academic writers on the continuing extension of the scope of the Act. This underlines the utility of this research in seeking to establish whether criticism of the Act as a neoliberal measure is justified. This is important because the term neoliberal is generally used in a negative sense, and often as a pejorative. To associate the Act incorrectly with this concept could make acceptance of its procedures and processes more problematic than might otherwise be the case.

1.4 Neoliberalism and the Act

If the Act is 'neoliberal' it is pertinent to ask what is meant by the term. Dictionary definitions seems generally to be agreed that it refers to the liberalisation of global markets associated with the reduction of state power, with state interventions in the economy minimised, an emphasis on privatisation, finance, and market processes, and capital controls and trade restrictions eased: free markets, free trade, and free enterprise are the main watchwords of neoliberalism (COD of Politics 2009). In the United Kingdom

the Conservative governments of Margaret Thatcher were seen as following neoliberal policies in many areas of economic and social policy (Levitas 1986; Bosanquet 1983), while in the wider world Pinochet in Chile and Reagan in the USA were early champions of the neoliberal political and economic agenda (Boas and Gans-Morse 2009).

Since the 1970s the term has become increasingly common in general usage, with etymologists and others recording a steep rise in its occurrence in both general and academic writing. It has been much used in academic circles, and become a term of disapprobation among some of those users (Boas and Gans-Morse 2009; Birch 2017). It has become a catch-all term used by 'liberals' to identify the political and administrative practices that support the 'business agenda.' However, without definition many of these terms are functionally meaningless, although in most cases 'neoliberal' will be seen as a pejorative.

This has been the case in the field of planning, although it was not generally until the start of the present century that academic planners identified the changes in planning brought about by the Thatcher governments after 1979 as being neoliberal in intent. Specifically, in the case of the PA 2008 it might have been expected that there would be considerable interest in such a radical departure from the path of consenting procedures brought about by the Act. However, this was not the case, and while many academic writers mentioned the Act in their published works after 2008, few made extensive comment on it. One matter on which commentators who have written on the topic appear to agree is that the Act was a neoliberal measure. Lord and Tewdwr-Jones (2018), Johnstone (2014) and Clifford and Tewdwr-Jones (2013) all characterise it as such, although none of them explains what is meant by the term.

Boas and Gans-Morse note that neoliberalism has become a label generally used by those opposed to free-market interests:

'First, neoliberalism is used asymmetrically across ideological divides, rarely appearing in scholarship that makes positive assessments of the

free market. Second, those who employ the term in empirical research often do not define it. And third, scholars tend to associate neoliberalism with multiple underlying concepts, including a set of policies, a development model, an ideology, and an academic paradigm.' (Boas and Gans-Morse 2009:140)

Few of the works referred to in this section are empirical studies so could not legitimately use the excuse suggested in the second of these reasons for not defining the term, quoted above, even if that were a valid proposition.

Assertions made, for instance, by Lord and Tewdwr-Jones, that

'... the 2008 Act ... represents New Labour's final attempt to aggressively push their vision of a neoliberal form of English planning by effectively endowing a newly created state agency with the capacity to decide, amongst other things, the location and type of a new generation of nuclear power stations.' (Lord and Tewdwr-Jones 2014:352)

have not been justified by proper analysis, and the pejorative descriptions have been left to lie, perhaps allowing an incorrect appreciation of the Act to become normative.

The meaning of the term 'neoliberal' is itself something of a difficulty: definitions generally refer to support for free market economics and reduction of government direction in economic matters. But there is little in these definitions to distinguish the concept from the philosophy espoused by 'right of centre' political parties in Britain and elsewhere during most of the twentieth century. Greater difficulties of definition have resulted from a generally indiscriminate use of the term by opponents of such policies, usually without providing an accurate, or often any, definition of the concept to which they are opposed.

This investigation inevitably involved research into the concept of neoliberalism. An obvious place to start was with a historical perspective, looking at the origins of the term and the changes and developments in its meaning over time. This would lead on to an examination of the ways in

which the concept was promoted by a variety of economists and political thinkers, and assimilated into the vocabulary and actions of practicing politicians in Chile, the USA, Britain and many other countries.

Efforts to find a definition led to an examination of the works of Hayek (1944) and Friedman (1962) and to commentators on their works, among them Harvey (2005), Peck (2018; 2017; 2010), Mirowski (2013), and Mirowski and Plehwe (2009). It was apparent that the term had carried a variety of meanings up until the time of Hayek's seminal book, and that his unwillingness to constrain his ideas by defining the term led to its accretion of a variety of meanings. Peck noted the diverse nature of the concepts apparently included within the term, and the ability of the concept to accommodate change and to mutate when particular developments are unsuccessful - to 'fail forward.'

'...if neoliberalism is a market-utopian ideal, rendered as a political destination, then the process of neoliberalisation, while it may take many forms, can never mean simple movement along some path towards deregulated freedom. (Peck 2010:24)

He noted the development of 'roll-back' and roll-out' aspects of the concept, removing existing restrictive law and regulation and replacing them with capital and business-friendly measures, a concept adopted by Allmendinger in noting that.

'Neoliberalism varies through time, between sectors and across space and territories.' (2016:95),

Harvey provided one definition:

'Neoliberalism is a theory of political economic practices that propose that human well-being can best be advanced by liberating individual entrepreneurial freedoms within an institutional framework characterised by strong private property rights, free markets and free trade.' (Harvey 2005:2)

Peck Boas and Gans-Morse noted that neoliberalism

‘... often denotes a radical, far-reaching application of free-market economics unprecedented in speed, scope, or ambition.’ (Boas and Gans-Morse 2009:141)

However Mirowski declines to define neoliberalism as a static or coherent set of theories, ideas, principles and assumptions.

‘Clearly , neoliberals do not navigate with a fixed static Utopia as the astrolabe for all their political strivings. They could not, since they don’t even agree on such basic terms as ‘market, and ‘freedom’ in all respects...’ (Mirowski 2013:53)

The difficulty in providing anything other than very high-level definitions of neoliberalism makes the classification of the PA 2008 as a neoliberal measure problematic. Identification of a generally agreed meaning of the term would provide a sound basis against which to judge the validity of the claims that the Act is a neoliberal measure. The lack of such a definition would naturally require the development of an alternative means of assessing the veracity of those claims. The occurrence of traits in political, economic and planning matters generally identified as neoliberal could provide the opportunity to develop metrics to assist in reaching a valid judgement about such claims. The obvious area to develop such metrics would be the parliamentary debates which preceded the passing of the Act. The views of the legislators could provide evidence of their intentions to produce a neoliberal measure designed to promote the interests of investors in infrastructure projects and to reduce government involvement in such areas, or otherwise.

The problem resolved itself into the identification of the particular traits to be sought among the words used in the reports of the parliamentary debates and committees that might indicate neoliberal tendencies in the bill which became the PA 2008. The refusal of Hayek and the Mont Pèlerin Society to define the term gave commentators, both political and academic, the task of trying to isolate and define the concept which they were attempting to elucidate. Inevitably this led to a variety of different approaches to the analysis of neoliberalism and a flavour of these have been set out above.

The approach to be taken in the present work required more definite tools to identify the concept, although the search for these indicators inevitably took place in the academic literature devoted to the topic. The three traits eventually identified from the literature were that neoliberalism was anti-democratic, it supported the interests of business to the exclusion of other things, and that it was a centralising force acting against the principles of subsidiarity.

One of the most commonly attributed features of neoliberalism is a reduction in democratic input to the regulation of economic and commercial affairs (Harvey 2005). This has been seen in the tendency of governments to remove matters that were once decided at a political level into the ambit of 'expert' administrative bodies. In Great Britain this is exemplified by the passing of responsibility for setting the Bank of England base rate to the monetary policy committee of the bank, this role having been the responsibility of the chancellor of the exchequer for many hundreds of years prior to May 1997. This removed a key lever of economic policy from the control of politicians and, in insulating the decision-making process from the potential influence of the day-to-day political scene, was thought to give greater credibility to the rate-setting process. In the field of planning, the establishment of the Infrastructure Planning Commission (IPC) under the Act was seen as insulating government ministers from the political difficulties of deciding on the merits of controversial planning applications. An earlier move in this direction could be detected in the increasing use of a 'calling in' process for major infrastructure planning applications from the 1960s. This removed the local authority as the decision-taker in such cases, to be replaced by a secretary of state, thus appearing to decrease the role of local democracy in the process.

Another essential component of neoliberalism is seen as the promotion of business in a free market economy, with a diminishing role, or 'roll-back', of government-imposed controls on what businesses can and cannot do, followed by a 'roll-out' of regulation favourable to the aims of the free market and framed to give certainty for businesses seeking to move into the markets now open to them (Peck 2010). In Britain, the prime example of the 'roll-

back' approach was the privatisation by the Thatcher governments of the nationalised industries and undertakers established after the second world war. The 'roll-out' phase was illustrated by the establishment of quasi-autonomous regulators to manage the overall operation of these recently privatised industries, ostensibly to provide a degree of control over the levels of investment to be made in the industry and regulating the profits they could generate. One of the main purposes of these bodies was to provide certainty to the industries concerned about their future political and financial outlook.

Centralisation as a third neoliberal trait was, perhaps, more difficult to establish than the first two. It was not widely discussed in the literature, although it was characterised as part of the neoliberalisation process that succeeded the removal of restrictions on business enterprises and their replacement with more business-friendly but centralised government regulation (Peck and Tickell 2002). A tendency to see centralisation as a neoliberal trait could be identified among some planning commentators (Clifford and Tewdwr-Jones 2014; Lord and Tewdwr-Jones 2013), although this was generally seen in the context of removing local determination of planning applications from the local to the national level. Confusingly, some texts also detected neoliberalism in decentralisation, in that the 'roll-back' phase of neoliberalism removed centrally imposed regulation and, by implication if no more, could be seen as returning power to something other than the centralised state authority.

A further consideration in the investigation would be the general political and economic environment in which the legislation had its gestation and was enacted, and the way in which these factors may have impacted the nature of the Act. Of particular interest was the unquestioned acceptance of the role taken by parliament in providing a legal environment favourable to the support of business interests: why should this be? Presumably because this was a normative position; one thought to be a natural role for the national legislature; a common-sense position. But what defines common sense, and how does a particular path of action become accepted as such, while others are not? This led to a consideration of the ways in which neoliberalism appears to have become accepted as common sense and may have

become embedded in the institutional processes of the country in general and parliament in particular.

The work of Gramsci offers some explanation for the way in which new concepts come to be accepted as common sense and so become inured to challenge. He held that:

‘...‘ruling classes’ developed a hegemonic culture, espousing its own norms, standards and values through the use of cultural institutions in such a way that they came to be adopted as the common-sense values of all (Gramsci 1971:196-200).

People generally identify their own best interests with this common-sense, and thus helped to maintain the status quo rather than looking for alternatives (Sassoon 1991b). This analysis has been supported by Zanotto (2020), building on the work of Van Dijk (2006; 1998). She suggests that a particular socially shared belief system, or ideology, that has been ‘naturalised’ comes to be taken as common sense, without any logical or acceptable alternatives. These ideologies provide the basis for discourses that legitimise and justify certain types of actions while making alternative possibilities unthinkable.

The acceptance of some of the ideas seen as basic to the concept of neoliberalism might be so entrenched that such matters might not be raised as issues during any debate in which their promotion was being considered. As will be demonstrated in Chapter 6, this was certainly the case in the parliamentary debates on the establishment of the consenting system for NSIPs, both during the original enactment of the PA 2008 and of the changes included in the 2011 Localism Act. This acceptance of neoliberal indicators as the normative approach to the issues raised by the enactment of the PA 2008 may have provided the basis for the assertions made by some commentators (Marshall 2013b; Lord and Tewdwr-Jones 2013) about the underlying neoliberal purposes of the Act.

As noted previously, the Act has been mentioned in works on general planning issues published since 2008, but there has been little, if any,

detailed commentary (Ferm and Toney 2018; Lord and Tewdwr-Jones 2018; Johnstone 2014; Clifford and Tewdwr-Jones 2013). However, a number of authors have looked at the effect of specific elements of the Act: Marshall and Cowell (2016) looked at its impact on the overall time taken for schemes to be consented, while Rydin (2020) and her collaborators (Rydin et al 2018a; 2018b; 2018c; 2015) considered its impact on local democracy with particular reference to renewable energy schemes. In one instance an author appears to have misunderstood the way in which the Act operates: Rydin (2013:33) misrepresents the Act's examination process as being subject to the decisions of the Executive Authority (her name for the Examining authority, the panel running the examination of the application), rather than being defined and constrained by the regulations of the Act itself. In his critical analysis of infrastructure planning, Marshall (2013b) produced a comparison with major infrastructure consenting procedures in the Netherlands, Spain, France and Germany. At the time there would have been insufficient data about the operation of the Act to determine whether it was effectively addressing the deficiencies that led to its creation. Clifford and Morphet (2023) have added a recent commentary on the Act in use, based on their earlier work for the National Infrastructure Planning Association (NIPA) (Morphet and Clifford 2017).

1.5 The Research Question

Given the utility and certainty of the inquiry process used under the PA 2008, and the willingness of governments to expand the use of the process to other areas of infrastructure and beyond, it seems logical to examine in more detail the objection to the Act on the grounds of its neoliberal intent, and to consider how neoliberalising tendencies in planning have been reflected in it. A logical and academically sound examination of the question can act as a basis for a more informed and nuanced understanding of the Act, as well as a narrative of its conception and gestation. It can also act as a counterweight to judgements about the Act that may not be fully informed, or that accept

the hegemony of neoliberal intent in government legislation. This may provide contrasting views to adverse criticisms of what has proved to be a valuable development of the planning system and which could be expanded into other areas of consenting (Morphet and Clifford 2017).

The research question was formed around attempts to understand what this criticism meant and to discover whether such criticism was valid. The matter is encapsulated in the question:

‘Is the consenting regime for nationally significant infrastructure projects established by the Planning Act 2008 a neoliberal measure; does it represent a practical advance in the way in which planning applications for infrastructure projects are determined; or is it both?’

This formulation raises obvious questions: why ask the question? What use are the answers? Supplementary questions arise about the meaning of ‘infrastructure’ and ‘neoliberal’ and ‘a practical advance in the consenting process’. The answers to the first two questions have already been mooted. Workable and appropriate definitions of infrastructure and neoliberalism will be sought in the following two chapters, and the position of the Act as a practical measure for the consenting of NSIPs examined later in the work.

A literature survey dealing first with the definition of the terms used in the research question began with an examination of the term ‘infrastructure’. While the Act provides a definition of infrastructure, it is apparent from the additional elements subsequently added to it that there may be scope for further extensions that are not currently envisaged. Works by Neuman (2006), Tomaney et al (2018), Sinnott et al (2015), Mell (2015), Graham and Marvin (1996), and Bowker et al (2019) were considered during this review. These dealt with a variety of interpretations of infrastructure, starting with the essentials of constructed assets dealing with transport, utilities and communication, and moving on to wider interpretations involving electronic communication and the environment.

The next topic considered was the origin of the term 'neoliberal' and the varying meanings attributed to it over time. A satisfactory definition of neoliberalism was elusive, with the continuing changes to the concept and its manifestations proving the validity of its 'roiling' nature, as described by Peck (2010). Lacking an acceptable definition, the approach suggested by Crouch (2011) and Gamble (2006), of analysing the constituent characteristics of neoliberalism to decide on the proper application of the term, offered a way forward. Clifford and Tewdwr-Jones (2013) and Lord and Tewdwr-Jones (2014) pointed to democratic legitimacy, centralisation, and business empathy and orientation as the main areas in which neoliberalism was exhibited. The investigation into the neoliberal nature of the Act could thus be resolved, at least at a superficial level, by seeking evidence of these particular neoliberal attributes within the Act or in its intentions and applications. These investigations are reported in the analysis chapters of this work.

In considering possible alternatives to its alleged neoliberal genesis, the historical background to the Act was investigated to seek alternative explanations for its origins. To provide an appropriate context for this review, it was logical to look at the development of major infrastructure works in Britain. These essentially started with the Industrial Revolution, which created demand for the transportation of raw materials to factories and the distribution of finished goods to customers. The development of planning legislation mirrors the development of modern means of transportation, through turnpikes, canals railways, ports and motorways, together with the means of powering industry with coal, gas, electricity and nuclear power, and the means of transporting this power through pipelines and along transmission lines. This investigation led on to a review of the parliamentary measures, acts and regulations that had supported, defined and controlled infrastructure developments during the Industrial Revolution and subsequently, leading up to the Planning Act 2008.

A further obvious path of inquiry into the origins of the Act was the political and planning environment that immediately preceded its enactment. Under successive Conservative governments from 1979, and under Labour from

1997, the political and economic landscape of the country underwent substantial changes, which many commentators have characterised as neoliberal (Bosanquet 1983; Skidelsky 1988; Thornley 1993; Peck and Tickell 2002). There was a distaste for 'regulation' and an antipathy towards anything that smacked of bureaucratic delay, as exemplified by the deputy prime minister's views on 'planners keeping jobs in filing cabinets' (Heseltine: 1979). The very extended public inquiries into the Sizewell B nuclear power station and Terminal 5 at Heathrow Airport added impetus to calls for changes to the system, as did lobbying by the Confederation of British Industry to the same end.

It was thought appropriate to investigate and analyse the parliamentary process that resulted in the passing of the PA 2008. As with all parliamentary business, the debates preceding the formal readings of the Bill and the committee and report stages in both Houses of Parliament, leading to the eventual enactment of the legislation, are recorded in Hansard, thus providing a verbatim record of the concerns and preoccupations expressed by legislators during the process. This material was analysed to identify the issues raised by the legislators during the parliamentary passage of the Bill, and to determine what opinions were expressed and what views taken about neoliberalism in the context of the Bill, and about the neoliberal indicators as identified in the literature review.

1.6 The Structure of the Thesis

This introduction is followed by a review of the two main areas to be investigated: nationally significant infrastructure; and the origins of neoliberalism. This forms a literature review of the relevant academic writing, with an emphasis on developments that have impacted the United Kingdom. A further chapter reviews academic writing dealing with the planning and consenting of major infrastructure and its relationship with neoliberalism. It notes a number of 'indicators' of neoliberalism. A discussion of the methodology used in the research is followed by a review of the history of

the consenting of major infrastructure projects in the United Kingdom. Succeeding chapters analyse the Act's parliamentary passage to determine the extent to which the neoliberal indicators are in evidence during the process. A chapter detailing the interviews carried out as part of the investigation follows. The final chapter contains a summation of the issues arising from the analysis chapters, and draws conclusions based on the evidence adduced from these and the rest of the work.

Chapter 2 The Literature of Infrastructure and Neoliberalism - Defining Terms

2.1 Introduction

Aristotelean logic dictates that an exposition cannot achieve clarity unless the terms used in the work are defined and understood (Kenny 2010:40). This chapter looks at the two of the main subjects to be examined in this thesis to explain the meanings attached to them, and how the terms are used in relation to the Planning Act 2008.

The term 'infrastructure' can be understood in a number of ways and has been subject to expanded interpretations involving such topics as transport, environmental and social needs, among many others. Works by Neuman (2006), Tomaney et al (2018), Sinnett et al (2015), Mell (2015), Graham and Marvin (1996) and Bowker et al (2019) are reviewed to gain an understanding of the breadth of the definitions of the concept in academic thought.

While nationally significant infrastructure projects (NSIPs) are defined in the Act, the willingness of governments to extend the application of the Act by statute or secondary legislation to other areas of infrastructure (S160 of the Housing and Planning Act 2016 is one example, but others are set out in section 2.2.2) makes it pertinent to examine what other types of infrastructure could be included in the provisions of the Act or in future legislation. A section on infrastructure reviews the use of the term in academic literature, detailing some of the variety of definitions in current use. It then goes on to look at the definitions of nationally significant infrastructure provided by the Act.

The early origins, establishment and development of the concept of neoliberalism are examined through the works of Armstrong (1884), Barnes

(1922) and Burns (1930). Its further development is recorded, from a variety of political standpoints, by Birch (2017), Springer et al (2016), Peck (2010), Mirowski and Plehwe (2009) and Harvey (2005), while Babb and Kentikelenis (2021), Jönsson and Baeten (2014) Centimo and Cohen (2010) and Boas and Gans-Morse (2009) provide further commentary.

The difficulties in providing an appropriate definition of the term are identified. The absorption of the concept into Thatcherism in the UK is identified in the writings of Margaret Thatcher herself (1995) and others, including Jackson and Saunders (2012), Yergin and Stanislaw (1998) and Skidelsky (1988), while its lasting influence on legislation in the years following the Thatcher governments is charted by Thornley (1993), Levitas (1986), Bosanquet (1983) and others.

2.2 Infrastructure

2.2.1 Definitions

This section looks at the variety of current definitions of infrastructure, and the expansion of the definition as social and technological expectations have developed. It concentrates on definitions provided by academic commentators, beginning with Neuman (2006) and looking at the extending variety of definitions provided by writers such as Graham and Marvin (1996), who deal with telecommunications infrastructure, and Bowker et al (2019), who consider support for electronic communication and machine learning. It reviews the tightly drawn legal definitions of infrastructure contained in the Planning Act 2008 (the Act, PA 2008) and identifies the extensions of the Act's coverage that have already taken place through legislative changes. It also considers possible further extensions of its applicability in the future.

Words have 'everyday' meanings and special meanings in particular contexts. Infrastructure is currently a well-used word in business and politics, as well as in the journalism that provides a commentary on developments in

these fields. While there are any number of definitions of the term to be found in dictionaries, it is proposed to look in detail at the way in which it has been used in academic literature, in order to be certain of the range of meanings that could be inferred from its use.

Although nearly all of the elements of infrastructure mentioned in the PA 2008 have been the subject of legislative control by act of parliament or regulation, they had not been considered or dealt with as part of a coherent approach to national infrastructure until the introduction of the Act. The term 'infrastructure' itself was not recognised by etymologists until 1927, having been coined in France in 1875 (OED 1989). The academic work discussed below has provided a framework within which the particular elements that constitute the infrastructure essential for the construction and maintenance of modern society in Britain can be identified.

Neuman (2006:6) provides an academic 'umbrella' definition of infrastructure that might be described in simple terms as the basic physical and structural foundations of a society, such as roads, bridges, sewers and so on, that provide society's economic foundations. He writes that:

'Infrastructure is the physical network that channels a flux (water, fluid, electricity, energy, material, people, digital signal, analog signal, etc.) through conduits (tubes, pipes, canals, channels, roads, rails, wires, cables, fibers, lines, etc.) or a medium (air, water) with the purpose of supporting a human population, usually located in a settlement, for the general or common good. It consists of a long-lasting network connecting producers and service providers with a large number of users through standardized (while variable) technologies, pricing, and controls that are planned and managed by coordinating organizations.'

He goes on to provide a more concrete definition in terms of a number of specific categories:

<i>'Utilities</i>	<i>Gas and electricity, water supply and sewerage, storm water management, waste collection and disposal</i>
<i>Public Works</i>	<i>Highways and bridges, dams and reservoirs, ports and airports</i>
<i>Community Facilities</i>	<i>Schools, parks, playgrounds, greenways, arenas, stadia and other sports and recreation areas and facilities, hospitals, libraries, civic buildings, auditoria, convention centers, fire and police stations, prisons, emergency management structures</i>
<i>Telecommunications</i>	<i>Telephone, Internet, television, radio, and multi-media; transmitted via satellite and antenna-propagated waves and cable- and wire-channelled signals</i>
<i>Transportation</i>	<i>Roads, sidewalks, trails, and bridges; railways, railway yards, and stations; seaports and airports; canals, rivers, lakes, and seas; mass transit (buses, subways, fixed surface rail, cable-guided trolleys, and suspended trams); multi-modal junctions and terminals; and their support facilities</i>
<i>Knowledge Networks</i>	<i>Schools, universities, research institutes, libraries, museums, archives'</i>

Several instances of overlap between the different categories were noted by Neuman, who traces the evolution of the understanding of 'infrastructure' from large capital-intensive 'term' monopolies (highways, water supply, sewerage, etc.) to a more local level of infrastructure operating at a community level (buses, trams, schools, libraries, etc.). He noted that larger infrastructure was often first established by public bodies (although, as will

be shown later in this chapter, this was not always the case in the UK) but is now frequently owned by private enterprises, or by companies set up and owned by the government and operating as if they were privately owned. He identified a public infrastructure of health facilities, military bases, prisons, schools, hospitals, parks and so on, but noted that this definition omits many other networks and facilities, such as research and administrative infrastructure supporting organisational development that can be described as infrastructure. He noted the multiplicity of definitions of infrastructure and the inevitable interconnection between them in a modern society. The advance of information technology and communications systems into this traditional landscape shows that

‘... infrastructures themselves are pervasive, subtly and not so subtly underpinning and connecting nearly every aspect of our lives.’ (Neuman 2006:11)

Neuman’s definition has been expanded and amended by others to include additional elements of the public realm, some modern, others not so. In addition to Neuman’s list, Tomaney et al (2018) included green infrastructure, which is defined as interconnected networks of vegetated and riparian habitats, including parks, rivers, corridors, swales, green roofs and walls and porous paving that provide ecosystem service. Sinnett et al (2015) dealt extensively with green infrastructure, albeit without defining exactly what is meant by the term. Mell (2015) noted the fluid nature of green infrastructure policy-making, but again failed to define the term. Graham and Marvin (1996) also widened the definition in considering the place of telecommunications infrastructure in urban planning.

Other definitions of infrastructure have come from the understanding that computerisation and electronic communication now provide a framework for commerce and industry, the so-called ‘thinking infrastructure’, such as machine learning, algorithmic governance and other forms of automated authority (Bowker et al 2019). Bowker and Starr (1999) make the point that the act of classification often distinguishes the way in which those classified elements are treated. Larkin sees infrastructure in the field of anthropology:

'... built networks that facilitate the flow of goods, people, or ideas and allow for their exchange over space.' (Larkin 2013:328)

While in the field of film studies, it is noted that:

'The infra-ness of infrastructures suggests that infrastructures work in the background providing the 'foundation' or 'substructure' for several everyday operations.' (Mukherjee 2021:102)

We see, then, a broadening over time of the definition of infrastructure, with the inclusion of the constituents of modern living added to advances in the technological support for everyday life. The scope of the definitions available both in academic and general usage gives an indication that the consenting procedures established by the PA 2008 could be extended into other areas of the planning process. It would allow future legislators to extend the coverage of the Act by further amending the list of infrastructure types in Section 14 (1). This can be achieved simply, as the secretary of state may by order:

'(a) amend subsection (1) to add a new type of project or vary or remove an existing type of project;

(b) make further provision, or amend or repeal existing provision, about the types of project which are, and are not, within subsection (1).'

(Planning Act 2008, Section 14(3)).

2.2.2 Nationally Significant Infrastructure and the Planning Act 2008

Since the PA 2008 deals with the consenting of nationally significant infrastructure, it will be useful to examine what is meant by 'infrastructure' within a general planning context. The breadth of the definitions of infrastructure allow almost any physical aspect of modern life to be thought of as infrastructure. The definition of nationally significant infrastructure contained in the Act aligns most closely with the descriptions of utilities, public works and some aspects of transportation in Neuman (2006).

While, as noted above, there are many definitions of infrastructure (Neuman 2006; Tomaney et al 2018), in the context of the Act, the term obviously refers to those elements of the built environment where the method by which development consent is sought and granted is defined by the Act. In the implementation of the Act so far, there appears to have been no confusion over what is intended, with the type and size of the projects subject to the Act being defined within the statute itself. In this, the 'golden rule' of statutory interpretation has been observed: that ordinary words must be given their ordinary meanings and technical words their technical meanings, unless absurdity would result (Law and Martin 2014). The definition is relatively narrow when compared with others, focusing on national communications (motorways, trunk roads, railways, ports, airports) and power supply (power stations, power lines and pipelines). It did not originally cover any local developments, social or community infrastructure, although its scope has subsequently been widened to cover business and commercial developments in specific circumstances, and housing in some cases.

It is obvious that the definition of nationally significant infrastructure in its wider sense will always be subject to change and development as a result of technological advance. A comprehensive 18th-century definition would have included turnpikes and canals, with 19th-century developments in railways not in contemplation, 20th-century advances in nuclear power generation and electricity and gas distribution not in imagination and 21st-century information technology beyond even that. In light of this, it is realistic to anticipate there will be further developments in what can be defined as infrastructure, and as such the consenting of these under PA 2008 processes or something similar is an obvious possibility.

The difference between nationally significant infrastructure and other infrastructure is perhaps artificial: the impact of a new power station on a locality is just as likely to be undesirable in terms of its impacts on amenity and convenience even if it serves only that locality. The development's distinguishing feature lies in the need that it serves, and the balance to be sought is between the obligation to provide what is required at a national

level and the purely local interests of those directly affected by the construction and operation of the project. The distinction between national and local interests had become apparent prior to the PA 2008: under the pre-existing planning legislation, local authorities ruled on applications for consent for major projects, but these would generally be 'called-in' for determination by the relevant secretary of state if a local authority objected to the scheme. However, this distinction has not been made by academic writers on the subject, with Neuman (2006), Graham and Marvin (1996) and Bowker et al (2019) making no reference to nationally significant infrastructure as such. Other writers dealing with less physical interpretations of infrastructure also find no need to make the distinction.

The distinction is, however, made in the Barker Report (Barker 2006), which set out many of the measures that were eventually incorporated into the Act. Barker distinguished between infrastructure that has an effect only on the locality in which it is situated, the merits and desirability of which should be decided and consented locally, and nationally significant projects that are promoted to address national needs, have a national impact and should be consented with this in mind. She saw these wider factors as being those that have a national rather than a purely local scope, scale of interest and impact:

'The vast majority of planning applications have only a local impact and should be determined at the local level by local planning authorities. But projects that are of national significance should be determined at the national level, while preserving the democratic mandate given to local authorities ... These national decisions need to take account of wider factors.' (Barker 2006:70)

Within the PA 2008, the definition of what is nationally significant in terms of infrastructure was originally confined to the areas that Neuman (2006) would define as utilities, public works and transportation. However, further legislation in the form of Section 160 of the Housing and Planning Act 2016 has included housing development associated with NSIPs within the PA 2008 consenting regime. The Infrastructure Planning (Business or

Commercial Projects) Regulations 2013, which amended Section 4 of the Act, had earlier brought a range of commercial and business developments (office use, research and development of products or processes, industrial process or processes, storage or distribution of goods, conferences, exhibitions, sport, leisure and tourism) within the ambit of the PA 2008 consenting regime in certain defined circumstances, although it strains almost to breaking point the Act's definition of infrastructure. The 2014 white paper 'Implementing Geological Disposal' committed the UK government to bringing geological disposal facilities (GDFs) and the deep investigatory boreholes necessary to assess the suitability of potential sites for a GDF within the definition of NSIPs in the PA 2008. For England (radioactive waste management is a devolved function within the UK), this was achieved in 2015 with the adoption of the Infrastructure Planning (Radioactive Waste Geological Disposal Facilities) Order 2015. There were proposals to include hydraulic rock fracturing projects (commonly known as fracking) for the production of hydrocarbons within the ambit of the Act, and it is possible that further areas of infrastructure activity may be brought within this consenting regime in the future.

These developments could be construed as indicating a degree of confidence among ministers and civil servants in the efficacy of the PA 2008 process. It is plausible to think of large housing developments, for instance, or other large developments that fall outside the PA 2008 definition of nationally significant infrastructure being examined and consented using the process. Through inclusion in the Section 14 recitals of the amended Act, these developments could become part of the definition of nationally significant infrastructure. This sophistry would, however, be stretched too far to cover approvals of local plans by recalcitrant local authorities, something that could appeal to government ministers as a suitable area of application for a process replicating the approach taken in the PA 2008 process.

It may be that, over time, the consenting process set out in the PA 2008 is extended to apply to areas outside the current legislative definition of infrastructure. This could no doubt be accomplished by means of amendments to the Act, the adoption of statutory instruments made under

the Act, or by reference within some further piece of legislation. However, in a House of Commons research briefing paper (HoC 2020) there is no mention of the Act or of NSIPs, suggesting a lack of desire to extend the scope of the Act further at present and, possibly, satisfaction with the way the system is currently operating.

2.2.3 Conclusion

This section has looked at the variety of current definitions of infrastructure and their expansion as social and technological expectations have developed over time. It identifies a malleable term, open to many differing and overlapping definitions. It reviews the tightly drawn definitions of infrastructure contained in the PA 2008 and identifies the extensions of the Act's coverage that have already taken place through legislative changes. Given the wide definitions of infrastructure, it also considers possible further extensions of the Act's application, which would enable many more elements of development to be removed from TCPA procedures and accommodated within its processes. The process itself could easily be amended to cover projects of more local utility, in addition to NSIPs. This underlines the relevance of the research question in seeking to determine the validity of claims that the Act is a neoliberal advance and possibly countering what may be ill-founded assertions.

2.3 Neoliberalism

2.3.1 The Need for a Definition

Neoliberalism is a term much used in academic literature but less often defined (Boas and Gans-Morse 2009:144). The conceptual framework of this work is the identification of a definition of neoliberalism that can be employed in the analysis of the origins and enactment of the 2008 Planning Act and be used to assess the modalities of its operation. The detailed analysis of how the Act compares with these neoliberal attributes will indicate how and to

what extent its categorisation as a neoliberal measure is justified ((Lord and Tewdwr-Jones 2014; Clifford and Tewdwr-Jones 2013; Marshall 2013b). Clearly this cannot be merely a matter of checking attributes identified in the origins and outcomes of the Act against a list of neoliberal ‘indicators’. There will be a need to investigate the cultural background of the Act, both historically and philosophically, in order to provide a context for its operation and to identify the nuances and complications in an analysis that seeks to provide a proper understanding of the issues, avoiding obvious but not necessarily correct conclusions.

Babb and Kentikelenis reference the observation by Centano and Cohen (2010:317) that the term neoliberalism

‘...is broadly used to refer to ‘an explicit preference for private over public control’, but that the term has increasingly suffered from multiple, competing definitions and a strong pejorative valence (Boas and Gans-Morse 2009).’ (Babb and Kentikelenis 2021:523)

Jönsson and Baeten (2014) opine that

‘...we must strive to take the complexities of neoliberalism seriously. Otherwise “neoliberalism” easily becomes a handy catchphrase to explain just about every contemporary manifestation of inequality and injustice.’

As with many terms in politics and economics, an original meaning may have changed over time, and it will be useful to look at the origins of the term and the way in which it has been employed in the past and what, if anything, it has now come to mean. This will then make it possible to assess the accuracy of assertions about the neoliberal intentions of the PA 2008.

2.3.2 The Origins of the Neoliberalism

Neoliberalism, as a term, appears to have originated at the end of the 19th century, being used to describe the views of Maffeo Pantaleoni, an Italian economist (Gide 1898). These encapsulated classic liberal or Whig ideas of the small state, laissez-faire economics, deregulation and the advancement

of the private sector (Haymes et al 2015). It was used later in the 1930s to define an economic path that was neither the Marxist planned economy nor classical liberalism (Mirowski and Plehwe 2009:417-455). Birch (2017:21) identifies the use of the word by Armstrong (1884) to mean liberals who promote government intervention in the economy, Barnes (1922) using the term as an opposite of 'laissez-faire'. Burns (1930) uses the term in what Birch considers to be the closest approximation to the modern usage: a paradigm in which competition, free market economics and rationality are valued above any other form of social and economic organisation. Neoliberal' is thus seen to be a term whose meaning has changed over time.

Neoliberalism originated as an economic theory but – in a way that could be said to illustrate one of the essential components of the neoliberal ethos, that of the primacy of the entrepreneurial spirit – it has become part of the discourse in many other fields, the most obvious being that of politics, but including the social sciences and planning. In the United Kingdom, this has occurred through the introduction of competitive and commercial practices into many areas of what had, following the nationalisation programme of the post Second World War Attlee government, been publicly owned organisations. This, in turn, has given rise to an interest in the ideas and practices that drove these changes. The work of Birch (2017), Springer et al (2016), Peck (2010), Mirowski and Plehwe (2009), Harvey (2005) and many other distinguished writers provide commentary on the development and growth of neoliberalism from a variety of political stances. Views on the definition of neoliberalism range from a market reaction to supposedly failed Keynesian economics (Peck 2010) to an advance of class warfare (Harvey 2005), with various interpretations in between. The study of the economic and other pressures brought to bear on all areas of society by the advance of neoliberalism has led to examination of the views espoused by the Vienna and Frankfurt schools of economics from the 1930s, the Walter Lippmann Colloquium held in Paris in 1938 and the ideas of Hayek, Friedman and others of the Mont Pèlerin Society from the 1940s onward.

Peck (2010:22-26) identified a number of different aspects of neoliberalism: roll-back neoliberalism, identified as the removal by governments of laws and regulations held to be preventing the unfettered operation of free markets; roll-out neoliberalism, seen as the introduction of laws and regulations actively assisting in the operation of a market economy, as a reaction to the market's dislike of the uncertainty occasioned by a lack of regulation. Peck characterised the differing way in which neoliberalism manifested itself, its ability to 'fail forward' and the varying speed of its spread and adoption as 'roiling' and 'variegated' neoliberalism, and described it as a mongrel concept:

'If neoliberalism is a market-utopian ideal, rendered as apolitical destination, then the process of neoliberalisation, while it may take many forms, can never mean simple movement along some path towards deregulated freedom. On the contrary, in as far as neoliberalism 'survives,' it does so through continued mongrelisation.
(Peck 2010:24)

In a similar vein, Mirowski (2013) declines to define neoliberalism as a static or coherent set of theories, ideas, principles and assumptions:

'Clearly, neoliberals do not navigate with a fixed static Utopia as the astrolabe for all their political strivings. They could not, since they don't even agree on such basic terms as 'market, and 'freedom' in all respects...' (Mirowski 2013:53)

Birch (2017:88) calls into question the utility of the term in analysing modern developments in political and economic thought, noting that many of the essential indicators of a neoliberal society were, in fact, established outside the neoliberal hegemony: independent central banks and de-unionisation linked to de-industrialisation both occurred prior to neoliberalisation in some countries; social welfare and education spending increased under neoliberal governments in the UK; privatisation and outsourcing has, in many instances, provided natural monopolies rather than competitive markets.

Within planning, various strands of neoliberalism have been identified, many descriptions making use of Peck's 2010 formulation. Allmendinger (2016:17-18; 88-115) enumerates deregulation or 'roll-back', 'roll-out', spatial planning, localism and others. He notes that:

'Neoliberalism varies through time, between sectors and across space and territories.' (2016:95),

while Marshall notes its 'variegated' form but sees neoliberalism as

'short-hand for the changes that the world, and above all capitalism, has undergone in recent decades.' (2013b:9)

This lack of definition of the term and doubts about its utility have not deterred commentators making use of it in assessing many aspects of modern life, and, as has been noted earlier, in judging the PA 2008 to be a neoliberal measure. The following sections look in more detail at the history and development of the concept in an effort to discover what the term implies in its use in connection with, and a criticism of, the PA 2008. The following chapter looks for a definition of neoliberalism that will allow a valid answer to the research question to be discovered.

2.3.3 The Development and Growth of Neoliberalism

The founding of the Mont Pèlerin Society (MPS) in 1947 by Friedrich August von Hayek is often seen as the beginning of neoliberalism in its modern form, although at this stage it was mainly of theoretical interest in a world dominated by Marxist and Keynesian economic and political thought. Original members of the MPS included many who went on to become luminaries of the neoliberal advance, including Milton Friedman, James M Buchanan and George Stigler (Mirowski and Plehwe 2009:417-455). Peck notes that the MPS's founding declaration in 1947:

'... one of the few collective statements it would ever endorse, explicitly refused to commit to any "meticulous or hampering ideology", preferring instead to define the organisation's goals in terms of "the exchange of

views among minds inspired by certain ideals and broad conceptions held in common”. (Peck 2010:66)

It is hardly surprising, then, that neoliberalism proved difficult to define, since its originators never intended to provide a definitive account of a coherent economic theory. Within the MPS, economists from various schools on both sides of the Atlantic held differing views as to what neoliberalism was or should be. However, as an academic think tank, the organisation spread its influence widely, with members holding government posts in West Germany during the 1950s and 1960s. The so-called ‘Chicago Boys’ group of Chilean economists, products of Friedman and Hayek’s doctrine and teaching at the Department of Economics of the University of Chicago, were actively engaged in *‘making up neoliberalism’* in Chile after Pinochet’s coup. (Peck 2010:19). The term neoliberalism was used in the 1970s and 1980s to describe the free-market economics of Margaret Thatcher in the UK and Ronald Reagan in the USA, both of which were based on the work of Hayek, Friedman and Buchanan (Boas and Gans-Morse 2009; Springer et al 2016). Another example of the influence exerted by members or followers of the MPS is seen in the influence on Thatcher’s political thought of her adviser Keith Joseph MP. One of Joseph’s speeches was described by her as

‘one of the very few speeches which have fundamentally affected a political generation’s way of thinking.’ (Thatcher 1995:255; Yergin and Stanislaw 1998:92-105)

If, as Peck (2010) avers, there is no founding text for neoliberalism, it is at least possible to identify diverse manifestations and variants that have developed in different countries and periods. Its appearance has taken local forms depending on time and circumstance: the neoliberalism of the UK is not the same as that promoted by the schools of Freiburg or Chicago (Birch, 2017:24-30). At the same time, a variety of methods of analysing neoliberalism have been used: governmentality with Foucault (1991), class analysis with Marx (Hall 1977), ideational analysis with Blyth (2002; 2013) and Gamble (1986), the ‘thought collective’ of Mirowski (2013) and his collaborators, and processual. This last approach, developed by Peck and

Tickell (2002), had its genesis in concepts of geography but has been adopted in other disciplines. It identifies a process of 'neoliberalisation' (Birch and Siemiatycki 2016) and defines this as a restructuring characterised by specific socio-economic forces and actors, including privatisation, commodification and marketisation. This definition provides a further framing of the concept for those seeking to identify the impacts of neoliberalism and the provenance of the PA 2008.

2.3.4 Attempting to Define Neoliberalism

The definition of terms is a requirement of any philosophical investigation. Since the research question looks at the veracity of the description of the PA 2008 as a neoliberal measure (Marshall 2013b: 45, Lord and Tewdwr-Jones 2014: 351), it is essential to determine what is meant by 'neoliberal'. As previously noted, its meaning has changed considerably since the term was first coined, and it has meant different things at different times. It is entirely possible that the meaning has continued to change since the need for the Act was first determined, and may continue so to do.

Looking at changes since the MPS formulation of neoliberalism, Boas and Gans-Morse (2009:151-152) analysed in depth the effects of the reforms undertaken by Pinochet in Chile and the impact of the Chicago School economists. They identified a move away from measures that could have been acceptable to the Austrian school of von Mises and Hayek, particularly in a lack of humanitarian concern for those affected by economic and social reforms. The critics of these policies, particularly those espoused by Friedman (1962) and Stigler (1971) and others from the second Chicago school of economics who taught and inspired the Chicago Boys, saw them as 'neoliberal', and this term became a general pejorative used by those opposing market and institutional reform. As such, it is an identifier rather than a true description of the philosophical background of the measures being criticised and, given that proponents of the principles of free markets do not describe themselves as neoliberals, it is perhaps unsurprising that there has been no rush to distinguish in detail the various strands of what is now considered to be neoliberalism. Birch (2017:96-97) asks why this lack of

clarity matters, and concludes that in deploying the concept of neoliberalism, a commentator should have a clear sense of his or her understanding of the concept; how this differs from other approaches; and what can or cannot be said about neoliberalism as a result. He asserts that imprecision is the enemy of clarity, and that the explanation of the intricacies and complexities of societal change are not made easier by the use of ill-defined or partially understood terms.

If the MPS provided no definition of neoliberalism, others have, with varying degrees of difficulty, attempted to capture its essential characteristics. Mirowski and Plehwe comment that

'Neoliberalism is anything but a succinct, clearly defined political philosophy.' (Mirowski and Plehwe 2009:1)

while Peck maintains that

'The word has become the bane of many a political lexicographer ... By its nature, as an oxymoronic form of 'market rule', neoliberalism is contradictory and polymorphic ... There is no ground-zero location – at Mont Pèlerin, in the White House, or in the Chilean treasury – from which to evaluate all subsequent 'versions' of neoliberalism.' (Peck 2010:8)

He sees neoliberalism as

'... a pattern of (incomplete, contradictory and crisis-prone) restructuring ... which has always been associated with uneven socio-spatial development and ... one should not anticipate some unidirectional convergence on small, more-or-less identical state forms.' (Ibid:20)

Using this definition, neoliberalism can be taken to refer to a wide variety of approaches to economic and social issues, albeit that such references are often made in relation to other values, norms, beliefs, attitudes and practices. The essential element of the concept is the conviction that free-market forces are of paramount importance and that their operation should have free rein. But there are a number of recurring difficulties in the use of the

term. Boas and Gans-Morse (2009) analysed the use of the word 'neoliberalism' in 148 journal articles between 1990 and 2004 and identified three main difficulties with its use:

'First, its negative normative valence and connotations of radicalism have produced asymmetric patterns of use across ideological divides. Second, scholars who do use the term neoliberalism tend not to define it in empirical research, even when it is an important independent or dependent variable. And third, the term is applied to multiple distinct phenomena, from a set of economic policies or development model to an ideology or academic paradigm. In present usage, neoliberalism conveys little common substantive meaning but serves as a clear indicator that one does not evaluate free markets positively.' (Boas and Gans-Morse 2009:144-145)

Birch finds a satisfactory definition difficult to distil from the many and varying characteristics attributed to neoliberalism. He posits that the concept is no longer a useful one because

'... it has come to mean whatever anyone wants it to mean.' Birch 2017:7)

He supports this view with an analysis of the use of the term in academic literature, following Boas and Gans-Morse (2009:138) and Peck (2010:13), and extending the analysis up to 2016. The results show a steep rise in usage from about the start of the new millennium up to 2015. His figures for 2016 are incomplete and although they show a sharp drop in the use of the term, a single result at the end of a series should not be considered to be contrary to the overall progression of the graph (Birch 2017:60).

Harvey has provided a comprehensive definition of the term that appears to allow for the wide variations of its manifestations in the years since its first appearances:

'Neoliberalism is a theory of political economic practices that propose that human well-being can best be advanced by liberating individual

entrepreneurial freedoms within an institutional framework characterised by strong private property rights, free markets and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices.' (Harvey 2005:2)

This definition presents difficulties in a planning context where the planning process, including that of the PA 2008, can significantly affect private property rights, given the ability of the state to prevent owners from doing what they will with their own property and to acquire it compulsorily, albeit with compensation, for schemes promoted by others. In the UK, the strength of private-property rights lies in the formality of a planning process that is not arbitrary, is prescribed by law, is transparent and is subject to appeal through the courts. However, in an advanced western society and subject to democratic constraints, the state must be able to provide a framework within which the necessary infrastructure can be put in place and maintained to provide for the needs of its citizens and support economic activity in terms of transport, power, water and waste disposal and so on. So that while private individuals' rights (both statutory and common law) may be adversely affected by the operation of the Act, this is done in order to ameliorate the situations of a larger number of other individuals, and society at large. Affected individuals still have the ability to exercise their legal rights through judicial review processes. In the context of Harvey's definition above, this would be a framework 'appropriate to such practices'.

It can thus be seen that the polymorphic nature of neoliberalism is recognised by many distinguished commentators (Peck 2010: 20-34, Mirowski and Plehwe 2009: 417-418). Its impacts in the context of British planning policy is accepted, with its roll-out and roll-back aspects, its continuing 'roiling' and 'variegated' nature, and its almost infallible ability to 'fail forward' (Peck 2010:23), in the sense that lessons are learned from the failure and enterprise moves forward, albeit possibly in a new form. The existence of neoliberalism is an accepted fact in the current analysis. Only by accepting this as a reality will it be possible to produce arguments with which to test the proposition that the PA 2008 is a neoliberal measure.

However, this lack of clarity and definition makes it essential to determine exactly what is meant by neoliberalism in assessing the validity of the proposition. Is the critic using the term as a pejorative or is there some degree of analysis supporting the conclusion? Certainly analysis is not much to the fore in the case of some writers dealing with perceived neoliberal developments in planning (Marshall 2013b; Lord and Tewdwr-Jones 2014). These authors see neoliberalism as a

‘... shorthand for the changes that the world, and above all capitalism, has undergone in recent decades.’ (Marshall 2013b:9),

and characterise the Act as

‘This more starkly neoliberal account of planning as a vehicle to enable development gained fullest expression in the Planning Act 2008, the principal accomplishment of which was the creation of an Infrastructure Planning Commission (IPC) ...’ (Lord and Tewdwr-Jones 2014:351)

There is no attempt to found their view on a particular concept of neoliberalism or to frame their comments in anything other than a negative sense, albeit Marshall’s view is perhaps the less pejorative.

This inability to provide a commonly accepted definition of neoliberalism presents a considerable difficulty in addressing the research question and it will be necessary to develop some form of metric to allow its proper assessment. This problem will be examined in some detail in the next chapter.

The way in which the concept of neoliberalism gained traction in political and economic discourse will be considered in the following section. In particular, the impacts of the concept on the Conservative governments from 1979 to 1997 and the succeeding Labour governments up to 2010 will be examined, since it was from this political environment that pressure for planning reform, and the PA 2008 itself, sprang.

2.3.5 The Spread of Neoliberalism

The growth and spread of neoliberalism has been an uneven and unheterogeneous process whose spread has been piecemeal and diverse in character. Commentators have decried the lack of a clearly defined political philosophy for neoliberalism (Mirowski and Plehwe 2009:1) and its origins have been described as being among

‘... a range of local settings before it acquired a more diffuse ideological form in synthesis with multiple sources of state and social power.’ (Peck and Tickell 2007:26)

In looking at the impacts of neoliberalism in Britain, it is pertinent to concentrate on the way in which the concept first presented itself and developed in this country.

As noted in 2.3.5 above, the first attempts to govern using neoliberal policies took place in Chile following the military coup that saw Augustin Pinochet become the self-declared president in 1974. The economists who advised Pinochet on the economic trajectory of Chile after the 1973 coup d'état, the so-called Chicago Boys, were taught and influenced by Friedman, and their version of neoliberalism is rooted in his precepts. Clark (2017) gives a detailed account of the background and methods of the economists and others who became identified as part of this group. He suggests that, rather than being solely an attempt by ‘neoliberal technocrats’ to change the economic trajectory of the country, their overall purpose was to change the character of Chile by radical means:

‘... they were a revolutionary vanguard that fostered a capitalist revolution that radically transformed the material and ideological foundations of the nation.’ (Clark 2017:1350)

The Thatcher governments in the UK (1979 to 1990) and the Reagan presidency in the USA (1981 to 1989) are seen as the next attempts to follow neoliberal precepts (Boas and Gans-Morse 2009). In the case of the UK, the agenda promoted by Thatcher and the policies implemented by her

governments were seen at the time and shortly after as being of the 'British new right' rather than neoliberal (Allmendinger and Thomas 1998; Thornley, 1993).

The story of Margaret Thatcher interrupting a government policy discussion by flamboyantly slamming Hayek's *The Constitution of Liberty* on a table and declaring 'This is what we believe!' is quoted by Peck (2010:xv) and it is intended to examine Thatcherism as a neoliberal construct.

A consideration of some of the views expressed about Thatcherism in the academic literature will reinforce the connection between the policies pursued by Thatcher's governments and the precepts of neoliberalism. It will also provide an insight into the development of the processes of neoliberalism and of its normative effects on government policy and administration. This will demonstrate the general continuity of the neoliberal approach to matters of social and other policy over the past forty years of UK government.

According to Skidelsky (1988), Thatcherism was based firmly on the precepts of the Mont Pèlerin and he identifies the founding in 1955 of the free-market think tank the Institute for Economic Affairs as the decisive event in the transfer into the British context of the political and economic ideas espoused by the MPS. He notes the decline of UK industrial output of 14% in the first 18 months of the Thatcher premiership and the rise in unemployment by two thirds over the same period. He considers the monetary policies advocated by Sir Keith Joseph and later the economist Professor Patrick Minford and pursued by the Thatcher government as promoting a mistaken monetary indicator. However, he concludes that, despite the ineffectiveness of attempts to restrict money supply, the deflationary shock of the measures designed to achieve this end added more than a million to the unemployment figures. He opines that this increase in unemployment was an essential part of the Thatcher political experiment.

Jackson and Saunders note that

'[The Communist Party magazine] Marxism Today theorised Thatcherism both as an 'accumulation strategy' – based on free markets and liberal economics – and as a new 'hegemonic project', directed at the exercise of political and moral leadership. It saw Thatcherism as an attempt to recast the electoral politics, ideological premises and policy regime of British government in such a way as to subvert the social democratic assumptions of the post-war era and to restore the Conservatives as the leading party of the British state. Neoliberal ideas – of the sort espoused by Friedrich Hayek and Milton Friedman – were said to have played a critical role in the formulation of this project.' (Jackson and Saunders 2012:13)

They note the way in which the terms 'Thatcherism' has been treated:

'Originally a pejorative term, the word was coined by the Labour Party and theorised by the Marxist left, before being adopted as a badge of honour by Thatcher and her associates. It has been used as a receptacle for a dizzying array of ideas and never achieved a stable meaning, even among Thatcher's closest allies. Historians cannot simply abandon the word, for it was central to political discourse in the 1980s, but nor should they impose upon it a single, arbitrary definition. 'Thatcherism' should be viewed as a discourse to be interrogated, not as an explanatory tool for the actions of the Thatcher governments.' (Jackson and Saunders 2012:12)

The parallels with the way in which the term 'neoliberal' has developed are obvious, and the encouragement to treat 'Thatcherism' as something to be interrogated rather than as an explanation applies equally to both terms

Thatcherism contained in-built tensions, where contradictory strands of policy were sometimes resolved but on other occasions were allowed to co-exist (Thornley 1993). Thornley noted that Thatcherism was not an ideology that valued discussion, local democracy, grassroots or academic opinion: rules were established in national policy statements and criteria defined by central government. In some senses, this approach could be said to be

followed in the PA 2008, with planning policy set out in formally designated National Policy Statements (NPSs) and the decision process strictly defined in the wording of the Act and the regulations made under it. This point will be pursued in later analysis chapters of this work.

Thornley (1993) saw the initial impact of neoliberalism in the UK as being in the form of deregulation and the privatisation of nationalised industries. Peck and Tickell (2002) saw this as the destructive, or 'roll-back', phase of neoliberalism, in which nationalised industries are returned to private ownership and the regulation of many aspects of professional and commercial life is relaxed or removed. Peck and Tickell also identified creative moments in the process, which they characterised as 'roll-out' neoliberalism. In this phase, the problems and uncertainties caused by the removal of regulation and the actions of newly privatised industries, which in many cases form natural monopolies, were addressed by the reintroduction of a new framework of regulation and governance, albeit philosophically aligned with neoliberalism. The paper recognised that the distinction between the two aspects of neoliberalism is stylised, but the definitions have proved useful in analysis of the phenomenon and the usage has been adopted widely in academic planning circles (Allmendinger 2016; Metzger et al 2015). The relationship of the PA 2008 to this 'roll-back, roll-out' model of neoliberalism will be examined in detail in the later analysis chapters of this work.

The contradictory nature of Thatcherism at a philosophical level is noted by Levitas (1986) and referenced in Thornley (1993). She noted the varying definitions of the 'new right', with Bosanquet (1983) identifying it solely, and very closely, with the ideas of Hayek and Friedman. Levitas argued that there are other strands of thought in the mix, with both authoritarian and nationalist elements to be seen. The latter elements identify themselves by attitudes of social conservatism (very much at odds with the libertarian impulses of neoliberalism), regard for the 'nation' (the United Kingdom and Northern Ireland in what were pre-devolution days), and for patriotism generally. An amalgam of neoliberal and authoritarian elements could be

identified in Thatcherism and gave rise to many of its internal contradictions, a major area of difficulty being the differing views held by the two philosophies about the relationship between the individual and society.

Only passing reference is made to neoliberalism in academic planning literature until the early 21st century. Little reference is made to it in Almendinger and Thomas's 'Urban Planning and the British New Right' (1998) and it is not until 2001 that Allmendinger makes a first substantial reference to it in his 'Planning in Postmodern Times (2001). As has been noted previously, the same or very similar is true of a number of other distinguished academic writers on UK planning topics. This seems to suggest either that Thatcherite policies were not recognised as being neoliberal in character until after 2000, or that the terms did not become coincident until then. Given the perspicacity of the writers involved, the latter explanation appears to be the more likely.

In the context of development plans under the Planning and Compensation Act 1991, Thornley (1993) noted that the government had devolved to local authorities responsibility for the difficult job of balancing different interest groups, while retaining the ability to monitor and control the process. Again, this has parallels in the operation of the PA 2008 as amended by the Localism Act 2011, in that the balance between the requirements of the National Planning Statements and other considerations, local and otherwise, has to be struck by an 'examining authority' (ExA) from the Planning Inspectorate, while the secretary of state will make the decision, based on the ExA's report, but at a political distance from the process. Thornley concluded that the principles and priorities of Thatcherism continued to be apparent during the years after her departure from office. Both these developments are in the tradition of reserving power to central authority seen in the first town and country planning acts and a constant feature of planning legislation since then. The PA 2008 continues and extends this tradition in removing from local government the ability to operate the consenting system for nationally significant infrastructure, although, in reality, this had already been effected by the 'calling-in' process under which a secretary of state

could determine planning applications at his or her discretion. (Clifford and Tewdwr-Jones 2013:10)

Although it was introduced by a Labour government, the PA 2008 gestated during the twilight of the Thatcher era. Despite its being enacted after the end of the period of Conservative governments its origins were to be found in the changes begun during that era. In particular, the desire to move decision-making from the democratic to the technocratic arena, as provided for in the Act, smacked of neoliberal intent. Rieger drew a conclusion that would explain the birth of the Act under a Labour government in noting that

'Blair's and Brown's governments often adopted policies that overlapped with the solutions of their Conservative predecessors. In particular, New Labour's rhetoric about the virtues of market mechanisms has underpinned impressions of considerable political continuities across the electoral watershed of 1997.' (Rieger 2021:113)

Political contradictions were again in evidence when a Conservative majority in parliament passed the Localism Act 2011, which returned control of the decision-making process to politicians.

The next section considers the role played by neoliberalism in Britain in the years following the passing of the Act.

2.3.6 Neoliberalism in Modern Britain

Commentary on planning in a pre-neoliberal environment allocates titles to any number of developments in the fields of economic and political theory: Marxist, post-Marxist, neo-Marxist, modernist, post-modernist, structuralist, post-structuralist, Fordism, post-Fordism are all noted in Allmendinger (2016). Neoliberalism, on the other hand, does not appear to have been subjected to this level of detailed analysis and classification. While overall trends and different approaches to the implementation of the neoliberal agenda have been noted (Allmendinger *ibid*), these have not been analysed in detail or labelled other than in the most generalised terms as defined by Peck and Tickell (2002). This is despite one of the recurring criticisms of

neoliberalism being its apparent ability to be reinvented and reapplied in a different form if it appears to fail in a particular method or area of application. This has been subject to adverse criticism by some commentators (Clifford and Tewdwr-Jones 2013) but this fails to acknowledge that a strength of the entrepreneurial ethos inherent in the neoliberal approach is that of problem-solving: in this context, the modalities of the project would not be considered as important as the achievement of the original aim. This follows closely the New Labour mantra that 'what counts is what works', and can be construed as a neoliberal approach.

Peck (2010) has characterised this reinvention and reapplication phase as 'roiling' neoliberalism and suggests that this aspect of its nature has defined the continuing manifestations of neoliberalism. The definitive example of the approach was seen in the response to the financial crisis of 2008, when the excesses of poorly regulated banking operations resulted in the collapse of major banks in the UK, the USA and elsewhere. The resulting pressures may well have resulted in the collapse of important parts of the global banking system if neoliberal precepts had not been cast aside to rescue it. In the event, a number of banks were virtually nationalised, with the government becoming the largest and controlling shareholder. In the UK, the government first 'persuaded' Lloyds TSB to take over Northern Rock then had to provide a reported £500 billion in support and confidence-building measures for the markets, including £37 billion in direct funds, to prevent both Lloyds and TSB from collapsing (BBC 2009).

Despite this major trauma for the neoliberal advance, the catastrophic failure in governance and the incoherence of economic purpose inherent in the financial crisis of 2008 did not signal the end of neoliberal ideas and agendas. Crouch, in his aptly titled book 'The Strange Non-death of Neoliberalism', writes that:

'[As to] what remains of neoliberalism after the financial crisis, the answer must be 'virtually everything'. The combination of economic and political forces behind this agenda is too powerful for it to be fundamentally dislodged from its predominance.' (Crouch 2012:179)

After a time of retreat and consolidation, the neoliberal advance has continued. Indeed, Enright and Rossi (2018:2) postulate that we are living in late neoliberal times and, although this positioning, even before the dawn of a post-neoliberal age has been identified is problematic, it does confirm that neoliberalism is still accepted as a normative concept. In his analysis of neoliberal references in academic literature up to 2016, Birch (2017:58-61) shows that the concept has been subject to an increasing level of commentary and analysis since the global financial crisis of 2008.

At a political level, the end of the Conservative governments under Major that followed the demise of Thatcher did not signal the end of their economic approach. The Blair government from 1997 made a virtue of continuing with its predecessor's spending plans in its first two years in office, while the Labour election manifesto promised that

'We will reform the Bank of England to ensure that decision-making on monetary policy is more effective, open, accountable, and free from short-term political manipulation.' (Labour Party 1997)

This undertaking was delivered in 1998, when the Bank became an independent public organisation wholly owned by the government but with the ability to decide monetary policy (Bank of England 2014). This removal of the decision-making process from democratic to technocratic control illustrated the continuation of policy associated with neoliberalism into the New Labour governments that saw the enactment of the PA 2008.

2.3.7 Conclusions

This chapter has looked in some detail at the two of the main topics of this thesis: infrastructure and neoliberalism. Although the infrastructure drawn into the ambit of the PA 2008 is closely defined in the Act itself, the value of this analysis has been in setting out how far definitions of infrastructure has been and can be developed. The past willingness of the government to extend the coverage of the Act to other areas of infrastructure means that a review of the areas of development that might be consented by some future

expansion of the Act is pertinent. It demonstrates that it could be extended to cover almost all types of built infrastructure, even if this included projects that were not national in scope. A similar process could be developed relatively easily to provide a more certain process for such projects currently assessed and consented by local authorities under Town and Country Planning Act procedures.

The chapter has also explored the origins of neoliberalism and the way in which it transformed from an economic theory forged by academics in Austria and Germany to become the hegemonic political approach of much of the western world and beyond. The connections between neoliberalism and the policies of the Thatcher governments from 1979 to 1990 have been examined, as have the changes in neoliberalism over that time and subsequently. The difficulties of identifying and defining the essence of neoliberalism as a result of its continually changing manifestations have also been examined. While neoliberalism is perhaps normative in economic and political terms in the UK and many other western democracies, as well as in Australia, several Asian countries and in parts of South America, its hegemony has been contested in academic circles, disputed and actively challenged by trades unions and by socialist political parties.

Despite the review and analysis of a wide variety of material on neoliberalism, it remains, as noted above, difficult to provide a comprehensive definition of what it entails. Crouch (2011:vi) provides a definition that stands alongside that of Harvey (2005:2), noted above, as perhaps accurate and certainly useful:

'There are many branches and brands of neoliberalism, but behind them stands one dominant theme: that free markets in which individuals maximise their material interests provide the best means for satisfying human aspirations, and that markets are in particular to be preferred over states and politics, which are at best inefficient and at worst threats to freedom.'

That neoliberalism exists is undisputed, as is the fact that the word contains meaning and has a role as something far more useful than as a mere pejorative, which is how it is often used at a political level and in common parlance. One thing it is not, however, is a blanket term of disapprobation for policies and approaches of which the commentators disapprove. So the definition of neoliberalism is contested ground and a single simple form of words has not yet succeeded in capturing the complexities of the concept.

It may be possible to support the argument put forward by Peck (2018), building on the earlier work of Boas and Gans-Morse (2009), casting doubt on the continuing validity of neoliberalism as a useful universal academic concept. However, it is entirely valid to confront the use of the term to ascribe what may be an entirely inappropriate character to the PA 2008, a measure that has provided certainty to planning procedures for major infrastructure projects in this country and that could provide a useful template for other developments in the consenting of large projects.

Academic literature has made attempts to define neoliberalism, albeit these are generally at a high level of conceptualisation. While these discourses are generally antipathetic to neoliberalism, only in some cases have they attempted to define it. There has been little attempt to examine the way in which the neoliberal narrative has become, in many contexts, normative. What has not been apparent in the literature of neoliberalism is any commentary or analysis of the way in which the concept has secured the general acceptance in public debate of the paramount role of commercial necessity and business interests.

The works of Gramsci (1971) provide one view of how new concepts are assimilated into what is generally described as 'common sense,' while Zanutto (2020) expanded the works of Van Dijk (2006; 1998) to suggest that shared ideology that becomes 'naturalised' is taken to be common sense, without logical or acceptable alternatives being apparent to those involved in the process.

The following chapter looks further into the literature directly relating to the PA 2008 and at the development of the processes that gave rise to it.

Following the conceptual framework, it continues the search for a usable definition of neoliberalism and looks at possible alternative approaches that might be used if a satisfactory definition is not found.

Chapter 3 Seeking Neoliberalism: the Search for a Useable Definition

3.1 Introduction

3.1.1 Overview

The research question asks if the Planning Act 2008 (PA 2008, the Act) is a neoliberal measure, and the reasons for such an investigation are set out earlier in this work. In addressing this question, there is an obvious need to define what is meant by neoliberalism, and the present chapter looks for a workable means of doing this. The search concentrates on the literature produced by academics in the fields of politics, economics and other related fields, and the planning literature commenting on the Act and detailing its impact. The former include Birch (2017), Boas and Gans-Morse (2011), Crouch (2011), Gamble (2006; 2001), Harvey (2005), Leitner et al (2007), Mirowski (2013), Mirowski and Plehwe (2009), Peck (2018; 2017; 2010) and Rydin (2013); the latter include Allmendinger (2016), Allmendinger and others (2013; 2000; 1998; 1997), Baetan (2012), Clifford and Tewdwr-Jones (2013), Lord and Tewdwr-Jones (2018; 2014), Marshall (2021; 2016; 2014; 2013; 2012; 2011), Morphet and Clifford (2017), Sager (2011), Taşan-Kok (2012), Tewdwr-Jones (2002; 1999), and Thornley (1991).

The preceding chapter looked at the origins of neoliberalism and the way in which the concept has spread into the mainstream of political and economic thought in Britain and elsewhere. It also noted the difficulties in defining a concept that has changed in meaning with time and depending on location. It quoted those very broad definitions produced by Harvey (2005) and Crouch (2011) that, while perhaps erecting an overall framework within which to assess the Act, do not provide an adequate yardstick to enable a definitive answer to the research question to be given. It also looked at the less positive views of a number of commentators about the usefulness of the

term 'neoliberal' itself, with Boas and Gans-Morse (2010) and Peck (2017) expressing doubts that the term retains any value in the analysis of current economic and political trends because of its overuse and a general lack of definition.

The chapter will review the literature concerning the relationship over time between planning (in the sense of the processes for land-use planning established by parliamentary legislation) and neoliberalism. It will deal with developments in England, since different processes have developed in each of the countries of the UK and the PA 2008 applies in its entirety only to England. It will then go on to consider the ways in which academic literature has dealt with this relationship, with specific reference to the consenting of major infrastructure projects through the statutory planning process established by the PA 2008. It will conclude with a consideration of some of the issues seen in the literature review as providing indicators for neoliberalism.

3.1.2 The Need for a Proper Understanding of Neoliberalism

The need for a proper appraisal of the provenance of the PA 2008 is underlined by the conclusions of Boas and Gans-Morse (2010) and Birch (2017) that the term 'neoliberal', and the assertion that a measure or action smacks of 'neoliberalism', is generally used in a pejorative and derogatory sense by those who do not agree with the contention that, in very loose terms, 'markets are good and government interference is bad'.

While it is not the intention of this work to review the decisions made under the PA 2008 process, it is undoubtedly the case that the UK government considers the process to have worked effectively in their terms, since the Act's scope of operation has been extended beyond that originally defined by the legislation. This, again, supports the need for a proper appreciation of the nature of the Act, so that criticism of these developments can be based on properly established principles and in full knowledge of what has produced them.

It is intended to identify from the literature the key concepts, or 'indicators', that define neoliberalism in the context of PA 2008. It will then be possible to look at the part these have played during the gestation of the Act and its subsequent operation. This will enable conclusions to be drawn about the legitimacy of claims that the Act is a neoliberal measure.

3.1.3 Academic Literature and the Planning Act 2008

There is still only a small amount of academic writing on the topic of the PA 2008 (Marshall 2021; 2013a; 2013b; Marshall and Cowell 2016; Johnstone 2014) and the Act appears to hold few attractions for writers in the field of planning. Books on planning written after 2008, such as Allmendinger (2016) and Metzger et al (2015), refer to the existence of the Act but very little is said about its origins and antecedents, and there has been little analysis of its impact. It is usually a matter of noting that the PA 2008 exists and briefly setting out its purpose.

The importance of the Act and of the extensions to its scope have been described above and it is not obvious why the topic has not yet been the subject of greater interest among academic planners. This may result from the small number of applications for consent initially made under the Act because of the investment and commercial hiatus that followed the financial crisis of 2008. This may have resulted in a distraction of interest, although the introduction of the new procedure over a considerable period of time gave commentators an opportunity for proper reflection and consideration of its merits or otherwise. The fact that it drew little comment may have been because the provisions of the Localism Act 2011 removed one of the most contentious provisions of the Act in abolishing the Infrastructure Planning Commission (IPC) established under the PA 2008, handing its operational functions to the Planning Inspectorate and its decision-making role to the relevant secretary of state. It may also be a result of there being a relatively small cadre of academic planners, some with interests in subjects unrelated to political or economic matters, and others with a greater interest in practical planning issues. While these are some of the possible causes of the failure

properly to address the Act in academic terms, there is, of course, no means of identifying why a particular path of academic research is not followed, and hence the true reason for the deficiency.

One of the exceptions to this apparent lack of academic engagement has been the work carried out at UCL on the consultation processes involved in consent applications under the PA 2008 for renewable energy projects. The Bartlett school planned to produce a suite of papers dealing with various aspects of the process, the first of which (Rydin et al 2015) dealt specifically with public engagement in decision-making on major wind energy projects.

Marshall (2021) makes brief references to the Act, arguing that it is the result of policy making that forms

‘...part of ideological strategies of those in power, in this case sometimes to limit available information and reduce participatory and deliberative spaces. This has been evident in many UK governmental instances in recent years, as in the Planning Act 2008 centralising of decision making on major infrastructure and the abolition of regional and strategic planning in 2011, effectively centralising what public control existed at these levels into central ministries and obscure deal-making processes in LEPs and similar business- and elite-led bodies.’ (Marshall 2021:159-160)

Marshall does not here distinguish between the processes through which projects are promoted and those involved in consenting them. He is welcoming of the open access to documentation related to applications under the Act provided by the Planning Inspectorate (PINS), but raises very reasonable concerns about the utility to the general public of much of the material made available.

‘The website of PINS in relation to large infrastructure policy adopted a policy of full exposure of all dealings on Nationally Significant Infrastructure Projects (NSIPs), though how far this commitment has endured since 2009 is unclear. The NSIPs regime is a good example of the critical link between information and real impact on results. While the regime is good at informing in a general sense, the information is often

highly technical and difficult for laypeople to deal with. Furthermore, the chance of effective influence is minimal, given that the vast proportion of NSIPs are approved.’ (Marshall 2021:162)

His scepticism about this aspect of the Act’s processes is palpable, as is his lack of appreciation of the way in which applications under the Act have continued to be handled.

3.2 Planning

3.2.1 Introduction

There are many different definitions of ‘planning’ in the sense in which it is used in this work, as a descriptor of design, land use and infrastructure provision. Beauregard (1996) asserts that the purpose of planning is, among other things, to bring reason and democracy to bear on urbanisation and to guide state decision-making with technical rather than political rationality. Sandercock (1998) considers that planning is concerned with ensuring options and alternatives are properly considered and evaluated in order to make public political decisions more rational. It operates in the public interest, as a modernisation project, and deals with integration and co-ordination. Neither of these definitions, nor the more prosaic definition of planning as

‘The control of urban development by a local government authority, from which a licence must be obtained to build a new property or change an existing one.’

and town planning as

‘The planning and control of the construction, growth, and development of a town or other urban area.’ (both OED 2016)

mentions infrastructure. It may be that the omission of the term from formal definitions of planning relates to the lack of attention paid to it in academic literature. However, it is not unreasonable to posit that these definitions should reference the means by which essential utilities and communications are procured.

3.2.2 The History of Planning

Few, if any, acts appear on the statute book without a precursor in terms of some earlier legislation or social watershed event. The PA 2008 was the latest in a series of acts stretching back to the middle-ages that deal with infrastructure and the increasing need to provide controls for developments flowing from the Industrial Revolution and the growth of the urban population (Daunton 2002:169). In studying this progression, it is possible to see the origin of the factors that gave rise to the PA 2008 and the means through which the Act addressed these issues. It is also possible to place the gestation of the Act in the context of British politics during the market-oriented changes after Margaret Thatcher came to power in 1979.

Planning has been strongly controlled by central government since its earliest days and, until the changes brought about by the devolution settlements for Wales, Scotland and Northern Ireland, the direction of the planning process was entirely in the hands of the Westminster government, albeit that delivery was delegated to local authorities. A review of the measures enacted since the start of the 20th century (given in Appendix 2) illustrates the point, and also shows how the planning and consenting of major infrastructure, in the sense discussed above, was not a matter directly addressed in the progression of town and country planning legislation through the century.

The Housing, Town Planning, Etc. Act 1909 permitted local authorities, under the close supervision of the Local Government Board, to prepare schemes '*for land in course of development, or likely to be developed*'. The schemes were particularly appropriate for suburban areas, where they regulated the layout of land and the density of development, and reserved

land for new highways (Booth and Huxley 2012). A further 14 pieces of legislation developing and amending town and country planning procedures were enacted between 1919 and 1977 (Gray and Gray 2008)

The development of the planning environment during the 20th century and beyond presents a consistent theme of central government deciding on the means by which planning consents are granted and laying down the criteria to be used in reaching those decisions, with changes of government policy effected by legislation. The increase in direction and regulation after 1979 appears to be at odds with the roll-back ethos of the early neoliberal agenda of the Thatcher years as described in Section 2.3.6 above. It could, however, also be argued that these acts represented the 'roll-back' of restrictive legislation and its replacement by a more business-friendly legislative environment (Castree 2008:159; Smith and Coombes 2012:134) This approach corresponds well with the provision of a sympathetic legislative framework within which neoliberal advances could be made (Harvey 2005:64-86) .

3.2.3 Planning and Infrastructure

The lack of consistent, specific reference to infrastructure is noticeable in the list of planning acts. Infrastructure often did not feature explicitly in the planning measures enacted during this period. Infrastructure legislation was legislated piecemeal, with measures on electricity and gas infrastructure, transmission lines and pipelines, and ports and airports all subject to separate legislation and to a variety of consenting processes, with measures relating to motorways and trunk roads enacted under the provisions of the various highways acts (Albert 1972; Hannah 1979; Falkus 1967). While this diversity of regulating and consenting systems may not have contributed directly to the dissatisfaction with the system expressed by some participants in the process (CBI 1992a; 1992b), the potential difficulties could be summed up by the fact that the consent application for the Sizewell B nuclear power plant was made partly under the provisions of the 1909 Electric Lighting Act (O'Riordan et al 1988:92). The two acts dealing

specifically with the planning aspects of major infrastructure projects were the Transport and Works Act 1992 and the Planning Act 2008. While the first of these was intended to reduce further the number of private acts dealt with by parliament, by providing an 'arms-length' process for consenting various classes of infrastructure not covered by other legislation, the PA 2008 provided a new and supposedly more efficient, comprehensive and time-defined process for consenting major infrastructure projects deemed by parliament to be 'nationally significant'.

3.3 Planning and Neoliberalism

3.3.1 Planning After 1979

While the Conservative governments of Margaret Thatcher (1979-1990) and John Major (1990-1997) both introduced legislation about planning, this mainly impinged on planning levels above those at which individual schemes were consented. The main engine for delivery remained the local authority, and it appears to have been assumed that government planning policy would automatically be transmitted directly to, and incorporated into, the locally managed mechanisms of the planning process (Allmendinger and Thomas 1998). At the same time, these governments largely overlooked both the significance of local concerns and issues and the individual policy processes of a disparate local government machine (Thornley 1993; Ambrose 1986, 1992; Ravetz 1980; Healey 1983). As a result of this multitude of local influences, 'top-down' Thatcherite planning policies were diluted in their application and practice.

Set against this backdrop, it is perhaps understandable that the government concurred with critics who thought the process should be overhauled and made faster (CBI 1992a; 1992b). In some senses, the changes to the consenting regime for major infrastructure projects occasioned by the PA 2008 could be said to reflect a desire to ensure that government policy was actually delivered, rather than being delayed by national or local pressure groups

either with concerns not directly related to the specific project or so widely drawn as to address principles rather than practicalities. While this approach can certainly be considered to exemplify a centralising tendency, it follows closely the approach of the early planning legislation (the Housing, Town Planning, Etc. Acts 1909 and 1919, for instance), which allowed devolved decision-making by local authorities but allowed central government to set the parameters and to retain ultimate control. It is also noteworthy that it was the Labour governments of Tony Blair (1997-2007) and his successor Gordon Brown (2007-2010) that produced and eventually introduced these changes, again underlining the continuity of some elements of planning policy direction between governments of differing political hues in the years after 1979.

3.3.2 Planning in Neoliberal Times

Although substantial concerns had already emerged about the consenting of major infrastructure projects before the publication of their work, Allmendinger et al, in 'Introduction to Planning Practice' (2000), while providing a general introduction to the scope and practice of planning in the United Kingdom, make little reference to the consenting of major infrastructure. This omission is somewhat balanced by a review of central government planning policy containing references to national guidelines for housing, minerals and transport being provided to ensure future needs are met, and it notes that road infrastructure is planned and developed directly by national government. It also notes that in 1997, the government was developing new approaches to the planning of nationally important infrastructure. It later concludes that the government had identified a number of weaknesses in the then current approach to planning; these included

'... inconsistent approaches to planning for national infrastructure, especially concern that major national needs took too long to resolve through the inquiry system.' (Allmendinger et al 2000:122).

A further reference to major infrastructure notes that inquiries into large development plans and major infrastructure projects were subject to

considerable delay as a result of the very large numbers of objections, all of which had to be heard despite considerable repetition, and to orchestrated delay on some occasions. Government ministers were concerned about the *'comparative cumbersomeness'* of the planning system, and that one proposal is for

'... a more policy or parliamentary-based approach to very major planning decisions such as airports to avoid long-drawn-out local public inquiries.' (Allmendinger et al 2000:123).

These words foreshadow the changes to be brought about by the PA 2008 and reflect the range of consultations already going on in government in order to find solutions to these perceived problems. The point is made again (Allmendinger 2001) that planning has survived because of its market-supportive role, despite the fact that it is 'slow and does inhibit development'. The government policy document 'Modernising Planning' is quoted, noting that consideration was being given to

'... instruments and other modern policy tools to help meet the objectives of modern planning.' (DETR 1998)

although there was no implication that the government had a neoliberal approach in mind for these developments.

in his book 'Planning In Post Modern Times' (2001), Allmendinger says the failure to address the problem of homelessness in Britain, to provide good homes, solve traffic problems in cities and prevent environmental degradation, were seen as a failure of planning in the 50 years since the Town and Country Planning Act of 1947. At the same time he asserts that planning exists to help the market and support capitalism, not to challenge and supplant it, and, in this sense, he does not oppose or contest some of the main tenets of the neoliberal advance, although this was not explicitly stated. The PA 2008 can be seen as following this supportive tradition.

Allmendinger speaking of the Town and Country Planning Act 1947 notes that

‘The planning system was created at a specific niche in history when consensus was required between many disparate interests.’

(Allmendinger 2001:7)

The problem with this approach is that consensus in an increasingly pluralistic society becomes hard to find, and that this is represented by the divergence between modernity and postmodernism. The reasons for a perceived lack of confidence in, and deference towards, the planning profession is seen as resulting from these shifting attitudes in a changing society. Postmodern times and attitudes are seen as the reason for an increase in ‘anti-planning’ thinking from both sides of the political debate during the 1980s and 90s. The ‘information society’ based on computing and other technological changes has led to an increase in economic information, changes in employment patterns, with a reduction in the proportion of manual workers in the workforce, and cultural changes brought about by new means of communication.

These changes required different conceptions of planning not based on the 18th-century ideal of the Enlightenment. Allmendinger (2001) notes the various analyses of these changes as they impact on planning, and lists a variety of proposed ways forward, including collaborative planning, the neo-pragmatist approach, postmodern interpretations and neoliberalism. He indulges in hyperbole in asserting that planning now has to operate in a complex world where there are no answers, only indeterminacy, variance, diversity and complexity. All the possible ways forward identified lead away from the concept of planning as a modernist enterprise and fail to provide a paradigm that is both in step with modern ideas of planning and is not founded in Enlightenment ideals. He concludes that postmodernism provides the most convincing analysis of this new paradigm. Allmendinger believes that defining postmodernism is problem: it presents no grand theories and contains themes of nihilism and relativism, and he considers it is better to define it as what it is not. He does not identify any of the problems of planning in the context of postmodernism as necessarily resulting from changes to the political and economic landscape brought about by

neoliberalism. He does identify neoliberalism as a driving force behind changes to planning in the last years of the 20th century and concludes that this is likely to continue to be so at the start of the 21st century. He does not, however, expand on what is meant by neoliberalism, and the difficulties of defining what the term is intended to convey are not addressed.

This approach would appear to be exactly what Gamble (2006) has in mind when he warns that the tendency to reify neoliberalism, making the abstract concept concrete, and seeing it everywhere and in everything should be avoided. Gamble does not consider this kind of reductionism to be useful and suggests that it is better to deconstruct neoliberalism

‘... into the different doctrines and ideas which compose it, and relate them to particular practices and political projects, rather than treating it as though it is the source of everything else, from New Labour to global poverty.’ (Gamble 2006:34)

Marshall (2013a; 2013b) sees neoliberalism as a ‘fuzzy,’ ill-defined concept of variegated form (Brenner et al 2010) but accepts the word as a useful ‘short-hand’ for the changes that the world, and capitalism especially, has undergone in recent decades. He sees these changes as being responsible for new ways of treating the ownership, financing, management and regulation of infrastructure projects. Using this very broad definition, then, any legislation recently introduced must inevitably be neoliberal in nature. While this is surely too wide a definition to allow for a useful analysis of the genesis and effects of that legislation, Marshall accepts these changes as a given rather than engaging in such an analysis.

Marshall does, however, go some way to address this lack of analysis and definition of neoliberalism in a monograph (Marshall 2014a) that post-dates his book (Marshall 2013b). In this, he considers changes in policy relating to infrastructure since the 1980s and identifies two related drivers for change: neoliberalism and changes in constitutional and political arrangements. He references works by Peck and Theodore (2007) and Brenner et al (2010) and accepts the label of ‘variegated neoliberalisation’ for the processes at

work during this period. He sees this as a more useful analytical tool than attempts to identify 'varieties of capitalism' (Hall and Soskice 2001), which result in every country considered being placed in one of two categories: liberal market economies, with the USA as the model, and co-ordinated market economies, with Germany as the exemplar. Marshall considers this approach to be overly simplistic and too far removed from the practical realities of the situation. The concept of variegation allows for flexibility and fluidity, stressing the complexities and striations of the processes at play in the changes made during this period. The concept allows both for the influence of internationally operating factors and the particular features of individual states in the shaping of new paradigms. He sees this as valuable in describing the changes in infrastructure procurement and governance regimes since the 1980s, during what he describes as 'the neoliberalising decades'. In a later work Marshall identifies the normative nature of the changes that occurred in these years:

'...there is a general understanding in writing on planning and urban change that the whole policy landscape has been 'neoliberalised' over several decades, in the UK as in all developed states (to varying degrees).' (Marshall 2021: 140)

Other authors have looked at various specific aspects of the application of the PA 2008: Marshall and Cowell (2016) examine the time taken for applications to be consented under the PA 2008 process as compared with previous arrangements; and Tomaney et al (2018) consider the desirability of the funding arrangements for one specific infrastructure scheme and question the way in which this particular scheme, the Thames Tideway Tunnel, was selected to deal with London's waste water and sewage problems. A research group from the Bartlett School of Planning at UCL examine in some detail the role of community involvement and consultation in the consenting of renewable energy infrastructure projects (Lee et al 2018; 2013; Natarajan et al 2019; 2018; Rydin 2020; Rydin et al 2018 a; 2018 b; 2018c; 2015). None of these works looks in detail at the relationship of the PA 2008 to neoliberal thought or practice.

3.3.3 Conclusions

This review of the relationship between planning and neoliberalism has concentrated largely on the work of two authors because few others have looked at this relationship in the same detail. Marshall concludes that legislation enacted during 'neoliberal' times must by definition be neoliberal, while Allmendinger, at least in his works prior to 2000, sees developments through a postmodern lens. The overall conclusion among these commentators, looking at the situation prior to the enactment of the PA 2008, is that while neoliberalism has impinged on planning through changes to legislation, the planning process itself appears to have been largely unaffected. Changes resulting from reductions to local government funding stemming from neoliberal central government policies have, perhaps, been more noticeable. Neither of these authors produces evidence to underpin an assertion of neoliberal intent in the Act, and other means of testing this supposition will need to be found to identify an answer to the research question.

3.4 Nationally Significant Infrastructure Projects in Academic Literature

Although the Act has been on the statute book for more than ten years, very little academic attention has been given to its operation or effectiveness. Given that the number of applications for orders to consent NSIPs under the Act is almost 220 (December 2022), and the government has extended the definition of projects to be consented under the Act and is consulting on further extensions, this gap represents a failure to provide a sound academic basis for criticism of existing and future legislation, and a lack of instruction material for practitioners and students. While some work has been done on public consultations on renewable energy projects (Rydin et al 2015), this does not represent a comprehensive investigation of what has become the

UK government's method of choice in dealing with complex and difficult planning issues.

In books on planning of a general nature there are few references to the Act, other than in, some cases, to note its existence and occasionally to give a brief explanation of its functions. Allmendinger in his book 'Neo-liberal Spatial Governance' (2016) provides a comprehensive review of the development of recent social theory and its impact on planning theory, with useful definitions of many terms. He does not, however, make any reference to the PA 2008 other than to note its existence in a table of planning legislation. Metzger et al (2015) contains no reference to major infrastructure planning, despite some commentators (Lord and Tewdwr-Jones 2014) claiming that the Act is evidence of the advance of neoliberalism into the planning process.

One of the main contributors to scholarship in this area is Marshall, whose published work on the topic includes a book concerned wholly with infrastructure planning and a number of monographs dealing with various aspects of the same topic. His critical analysis of the planning of major infrastructure in Britain, with comparisons with European practice and experience (Marshall 2013b), although published after the PA 2008 provisions had been enacted, contains no material relating to the 18 or so cases that had been decided using the Act's procedures at the time of publication.

Infrastructure industries are seen by Marshall (2013b:26-28) as part of internationally operating influences on the development of neoliberalisation, with a varying impact across infrastructure sectors. He notes that there are publicly and privately owned players in this market, and stresses the need for governments to consider the provenance of these organisations in determining infrastructure policy. He reviews the ways in which the 'privatisation' of infrastructure provision and maintenance industries has been achieved and how this has affected the delivery of provision in Britain and elsewhere. This includes ports, airports, roads, railways, water, energy and waste management, all sectors within the purview of the PA 2008. The

place of infrastructure industries in the political landscape means that they cannot be kept separate from the operation of governmental and political processes. A fragmentation of the state structure as a result of privatisation and the use of arms-length agencies that often results in a decline in the strategic capacity of governments is identified (Flinders 2008). This is seen as an avoidance of democratic governance, with the delegation of responsibility to infrastructure industries removing control from elected representatives and making it more difficult for special-interest groups to influence decisions. These developments correspond closely both to the roll-back and roll-out of political elements referenced in definitions of neoliberalism provided by Peck (2010) and Brenner et al (2010). Marshall considers that the pre-2008 planning system offered a 'relatively fair balance' between the need to provide decisions in major infrastructure planning applications and 'citizen responsiveness', although he does not define what this term means. The implementation of the PA 2008 model will be the real test of planning, by which he appears to mean people's willingness to become involved in the planning process as against the intentions of the Act, which he considers to be *'well characterised as neoliberal and far from extending democracy'*. (Marshall 2013b:45). Marshall sees the neoliberal emphasis on competition as a driver for the need for infrastructure expansion, with ports, airports, roads and railways, supported by adequate power generation and waste-disposal facilities, all being necessary to facilitate the growth of competitive business and commerce.

Marshall writes that, in his judgement:

'... the play of interest and party politics and ideology ... may well have invented a mechanism which will appeal to other governments trying to speed up decision making on difficult projects.' (Marshall 2013a:132)

Possibly he had other national governments in mind here, but in England this has already proved to be the case, with the transfer of some classes of business development into the ambit of the PA 2008 consenting process. The consultation process relating to the possible inclusion of fracking applications provides additional evidence for this development. He also

notes that National Policy Statements (NPSs) are now accompanied by the National Infrastructure Plan, which, in its early manifestations, provides a 'wish list' of areas of infrastructure development that would be beneficial to the economy. There is a general lack of spatial content in the NPSs, although the statement dealing with nuclear power stations defines and prescribes acceptable development sites, and the waste-water NPS defines the Thames Tideway Tunnel as the means to be adopted for dealing with waste-water problems in the London (although it was adopted several years after Marshall's paper). This approach is characterised as 'planning-lite' and Marshall considers that no other government has attempted such a neoliberalised reform path as that adopted in the United Kingdom.

The ongoing collapse of 'rolled-out neoliberalism' following the 2008 financial crisis is described by Metzger et al (2015). They note the anxiety that planning is becoming aligned with neoliberalism, where managing change becomes part of a technical rather than a political exercise.

Clifford and Tewdwr-Jones (2013) make no wide reference to the operation of the Act despite the fact that their book was published just five years after its enactment. The book provides a useful review of the origins of the PA 2008 but contains no critical comment on the operation of the Act. They consider the state of planning practice at a time of considerable change in the political paradigm during which planning policy was decided and planning decisions made. This work addresses the development and impact of neoliberal trends within UK governments and looks at how this has affected planning practice. The authors review the impacts of planning changes and identify these changes as starting with a Green Paper entitled 'Planning: Delivering a fundamental change' (DTLR 2001a). The Act is viewed as part of an advance of neoliberalism into all areas of planning (Clifford and Tewdwr-Jones 2013:40-44). In respect of the PA 2008, they conclude that

'The intention here, as with previous reforms, was to streamline the planning system, and the proposals illustrated the degree to which central

government still called the shots on the form of planning existing in the regions and locales of England.’ (Clifford and Tewdwr-Jones 2013:9)

They opine that

‘... the planning reforms of the last 15 years are more significant than those of the 1980s ... [They] can be understood in terms of the government to governance shifts, and through frameworks of new public management and the third way, through the ideology of localism and through the lens of neoliberalism.’ (Clifford and Tewdwr-Jones 2013:58)

Lord and Tewdwr-Jones are in no doubt about the Act’s antecedents:

‘This more starkly neoliberal account of planning as a vehicle to enable development gained fullest expression in the Planning Act 2008, the principal accomplishment of which was the creation of an Infrastructure Planning Commission that would assume responsibility for “nationally significant infrastructure projects”, thereby removing this broad category from local authority planning control. The need for this national planning agency was said to be prompted by systemic delay in the granting of planning permission for large development – particularly for power generation, port and airport projects.’ (Lord and Tewdwr-Jones 2014:351)

and

‘The culmination of this process can be seen in the 2008 Act in that it represents New Labour’s final attempt to aggressively push their vision of a neoliberal form of English planning by effectively endowing a newly created state agency with the capacity to decide, amongst other things, the location and type of a new generation of nuclear power stations.’ (Lord and Tewdwr-Jones 2014:352)

The authors’ complaints are of the removal of local democratic involvement in the consenting process and a pro-business bias, both of which are seen as manifestations of neoliberalism and which they consider indicators of neoliberal legislation. They conclude that

'... the Planning and Compulsory Purchase Act 2004, the Planning Act 2008 and the Localism and Decentralisation Act 2011 ... are part of the same story: the dismantling of the principles upon which urban and environmental planning has taken place in England for decades. As demonstrated here, this has resulted in a planning system that may lose many of its regulatory teeth by planning being either rebranded as an animator of taken-for-granted growth (rather than having a real role of contestation) in the roll-out phase of the neoliberal project or else bypassed in favour of locally devised plans in which business is given "carte blanche" to play a more prominent role than ever before.' (Lord and Tewdwr-Jones 2014:356)

Sager, referencing Dumenil and Levy (2004) and Harvey (2005; 2006), notes that

'The current neoliberalisation of many societies is ... characterised by fewer restrictions on business operations, extended property rights, privatisation, deregulation, erosion of the welfare state, devolution of central government, uneven economic development and increasing social polarisation.' (Sager 2011:148-149)

3.5 Discussion

This literature review has identified a view among academics in the field that planning in the UK has been affected by the advance of neoliberalism. While academic planners were, perhaps, not in the forefront of those identifying the changes brought about during the 1980s as part of this advance, there is now an acceptance on their part that neoliberalism has played and continues to play a role in the formulation of the narrative of planning development.

There is an uncritical acceptance on the part of some of the leading writers in the field that because the PA 2008 legislation was enacted at a time when neoliberalism was in the ascendant, then the Act itself must be a neoliberal measure (Marshall 2021, 2013a; Lord and Tewdwr-Jones 2014). Certainly

the Act has some characteristics that suggest this is the case, especially in its original form, where decisions were to be taken by the unelected IPC. The Act was intended to 'depoliticise' the decision-making process in what could be seen as a distinctly neoliberal advance. However, this was overturned by the changes brought about by the Localism Act 2011, which reinstated a full political input to the process by making an elected politician, a secretary of state, the decision-maker.

Had this change not been effected the criticism of the Act as neoliberal might have been more sustainable. Žižek (1999) characterises the post-political as the age of experts and the IPC, with no democratically elected inputs, could be seen in this light. However, its abolition and the reintroduction of a political decision-making process moved away from this overtly neoliberal de-politicisation of the major infrastructure consenting process.

If commentary on the appearance and impact of neoliberalism in planning in the UK in general is not extensive, then the same is very much the case for the impact of the PA 2008 on planning analysis and practice. Those writers who have addressed these topics are minded to characterise the Act as a neoliberal advance, although their definitions of what constitutes neoliberalism, and how it is manifested in the wording and operation of the legislation, is vanishingly small. The paucity of literature in this field is surprising given that almost 100 schemes have now been consented using the PA 2008 procedure and that the Planning Inspectorate makes a considerable amount of information about each of these schemes publicly available, both during and after the examination process. This would appear to be rich source of material for future research effort.

Crouch (2011) and Gamble (2006) thought it logical to undertake a proper analysis of the constituent characteristics of neoliberalism in deciding the proper application of the term. This approach appears to be the most logical in outlook and approach, allowing for each alleged 'attribute' of neoliberalism to be examined in detail, and for conclusions based on the evidence adduced to be reached.

The lack of relevant planning literature again presents something of a difficulty in considering which aspects of the Act and its processes should be assessed for neoliberal intent. Certainly the wider literature provides broad indicators, but these are often somewhat nebulous and not easily applied to a particular piece of legislation. Harvey defines neoliberalism as

... a theory of political economic practices that propose that human well-being can best be advanced by liberating individual entrepreneurial freedoms within an institutional framework characterised by strong private property rights, free markets and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices.' (Harvey 2005:2)

and while this definition identifies a number of criteria, some do not obviously relate to the PA 2008 and few of them can be easily assessed.

As originally framed, the Act attracted adverse criticism because of the depoliticising nature of its decision process, devoid of political input other than in the definition of the National Planning Statements (Lord and Tewdwr-Jones 2014; Clifford and Tewdwr-Jones 2013). The Act continues to attract criticism for reducing the level of democratic input to planning decisions for NSIPs (Rydin et al 2018a; 2018b; 2018c; 2015; Natarajan et al, 2018; 2019; Lee et al 2018; 2013; Johnstone 2014), albeit mainly from one group of researchers. Hayek contended that democracy and liberalism are antithetical (quoted in Mirowski and Plehwe 2009:443), and others have argued the same for neoliberalism and democracy (Lord and Tewdwr-Jones 2014). An assessment of the democratic input to the Act's processes will provide a logical indicator of the extent of its neoliberal intentions.

The roll-out and roll-back nature of neoliberalism (Peck 2010; Brenner et al 2010) is identified by Lord and Tewdwr-Jones (2014) in the effect of the Act. This formulation suggests the concentration of legislative and administrative powers centrally, the modification of these powers to suit a neoliberal agenda and the devolution of these amended powers to other bodies, either public or private. In planning terms, this has been seen as a move to centralise planning control to a governmental level at the expense of local

authority decision-making (Rydin 2013), or even as a removal of restrictions altogether (Lord and Tewdwr-Jones 2014). The path of centralisation and devolvement in the consenting of major infrastructure projects can thus provide a further valid indicator of the neoliberal content of the Act.

The problem of the lack of definition of neoliberalism in planning is, perhaps, that identified by Baetan, who suggested that

'To combine 'neoliberal' and 'planning in one phrase then seems awkward at best, and an outright oxymoron at worst.' Baetan (2012:206)

In trying, then, to identify other neoliberal characteristics in the Act, it is necessary to refer back to the wider literature to seek definitions of the neoliberalism that may be apparent. Even there, the wide-ranging formulations of Harvey (2005), quoted earlier, and Crouch, who wrote that

'There are many branches and brands of neoliberalism, but behind them stands one dominant theme: that free markets in which individuals maximise their material interests provide the best means for satisfying human aspirations, and that markets are in particular to be preferred over states and politics, which are at best inefficient and at worst threats to freedom.' (Crouch 2011:vi)

identify only an attraction for free-market solutions as a defining and observable characteristic of a neoliberal approach. This, then, is a valid third indicator of neoliberalism.

3.6 Conclusions

The literature review establishes that, although the definition of neoliberalism is not something with which academic planners have concerned themselves to any great extent, there are a number of indicators of neoliberal tendencies that may be examined to determine whether the identification of the PA 2008 as a neoliberal measure is valid. This approach follows the path suggested by Crouch (2011) and Gamble (2006) of considering the effects of

neoliberalism rather than using the term as an identifier without fuller analysis.

The answer to the first part of the research question, whether the PA 2008 is a neoliberal advance, lies in part in determining whether the legislation exhibits the three characteristics suggested by the literature: does the Act reduce democratic accountability? Is the Act a centralising or decentralising measure? And does the Act promote business empathy and orientation in the discharge of planning functions?

The passage of the Act through parliament will be examined for evidence of neoliberal intent in the minds of the legislators; a detailed analysis of the nature of the three characteristics will be carried out to determine if any of them gives positive indications of neoliberalism; and antecedent infrastructure legislation will be examined to identify path dependence and historic justification for the approach taken by the Act. Evidence demonstrating the level of the Act's practicality will also be assessed.

There are also elements in the background and history of the infrastructure consenting process that may identify its provenance as rooted in a far older tradition. This history will be investigated to determine whether the origins of the Act can be identified in the continuing development of planning practice over time, rather than as a discontinuity or change of course as a result of the influence of neoliberal thought expanding from the spheres of politics and economics. Again, this possibility will be the subject of examination and analysis in a later chapter.

Chapter 4 Research Design and Methodology

4.1 The Research Question

The research question asks if the consenting regime for nationally significant infrastructure projects (NSIPs) established by the Planning Act 2008 (the Act, PA 2008) is a neoliberal advance, a practical solution to the difficulties perceived to surround the consenting of these projects, or both.

This chapter sets out the analytical methods and ethical conduct of the research. It details the way in which it was designed, sets out the methodological approach taken in investigating the research question, and explains why this particular approach was chosen. It also describes some of the possible alternative approaches that might have been used and gives reasons these were not selected.

The literature review looked in some detail at the way in which the PA 2008 has been portrayed in planning literature. It was apparent that very little had been written specifically about the Act as a whole, although there had been some interest in academic circles in certain aspects of the Act and its operation (Marshall and Cowell 2016; Cowell and Devine-Wright 2018). Among those authors who had written on the topic or mentioned it in their work (Marshall 2021, 2013b; Allmendinger 2016; 2001; Lord and Tewdwr-Jones 2014; Clifford and Tewdwr-Jones 2013; Rydin 2015) there was a consistent view that the Act was a manifestation of neoliberal tendencies in the development of planning legislation, albeit the term 'neoliberal' was generally taken as understood and was not given the benefit of a definition.

Further investigation into the origins of the term 'neoliberal' and its adoption as a descriptor of an approach to politics and economics in the late 20th century was carried out in an attempt to find a definition that would help to explain the way the term has generally been used in the planning literature. The definitions available, such as they were, did not correspond to the obvious characteristics apparent in the PA 2008.

Without a satisfactory definition, an alternative approach was taken in which some of the characteristics of neoliberalism were identified from the literature with a view to determining whether the Act exhibited or promoted any of these. In general terms, neoliberalism is seen as the expression of free-market capitalism through the medium of laissez-faire economic liberalism, with an emphasis on free trade (Haymes et al 2015), globalisation, privatisation and deregulation, and an increasing role for the private sector in the economy and society in general (Boas and Gans-Morse 2009). In looking at how these high-level characteristics translate into the field of planning practice, the most obvious areas of interest identified in the literature, especially that of Lord and Tewdwr-Jones (2014) and Clifford and Tewdwr-Jones (2013), were depoliticisation, centralisation and business bias. The role of public participation in the operation of the Act was not considered in this context as this has been investigated in some detail by, among others, Rydin et al (2015) and Lee et al (2018; 2013). These works are essentially focused on the way in which individual concerns and objections, particularly with regard to renewable energy projects, are handled under the processes of the Act, rather than with the impact of the Act as a whole.

Attempts to understand the nature of the Act also led to questions about the intentions of the politicians who instigated it, and about the concerns of the legislators who dealt with its passage through parliament to enactment. Further areas of interest were the views of individual politicians who had been involved in this process, and this extended to include people involved in the procurement of major infrastructure projects and to some of the academics who had written and published on the topic. Obviously every piece of legislation has a historical context and it was appropriate to examine the historical environment of the Act and to show how it fitted into the development over time of the consenting process for major infrastructure schemes.

The conceptual framework of the thesis is the attempt to discover if the indicators identified in the literature review as those that might be expected in neoliberal legislation (reduced democratic accountability; centralising and

decentralising tendencies; exhibiting business empathy and orientation) are exhibited by the Act, and to what extent, if any, the legislators intended the Act to be a neoliberal measure. A further part of the framework is an investigation into the historical background of the Act, to determine whether this provides a convincing account of its origins.

This chapter deals first with those elements of research design that were considered during the assembly of the research method:

- it deals with questions of ontology and epistemology;

- it looks generally at the background of the Act and the identification of neoliberal indicators;

- it sets out the methodology to be used in the investigation of the research question and the reasons for adopting the methods used;

- it summarises and extends the conclusions of the literature review to justify and contextualise the research question and the detailed examination of parliamentary accountability, centralising tendencies or otherwise and business empathy and orientation as the indicators of neoliberal tendencies in the Act;

- it reviews the historical context of the Act through an examination of the development of infrastructure legislation since the middle-ages;

- it examines the passage of the 2008 Planning Bill through parliament, detailing how the analysis of the legislative process would be carried out and then how the measures developed for parliamentary scrutiny of National Policy Statements made under the PA 2008 were to be assessed;

- it establishes the process used to interview politicians, academic writers and leading players involved with infrastructure;

- it considers the ethical dimensions of the research work and reflects on the possible effects on the work of the writer's own background and involvement with the Act; and

the chapter concludes with some comments on the efficacy of the methods used in the work.

4.2 Ontology and Epistemology

The ontological framing of this thesis lies very much in the realm of an acceptance of the realities presented by everyday experience. While allowing that other realities may exist, they do not appear to have a direct relevance to the research question. While ontological argument may prove the existence of God or otherwise (Kenny 2010), the PA 2008 has a verifiable physical existence in the form of a written statute kept in store in the Palace of Westminster, with copies published by the Keeper of Public Records in his capacity as the Queen's Printer of Acts of Parliament. The processes set out in the Act provide the framework for the way in which applications for development consent for specified significant infrastructure projects are processed within the English legal and planning systems. While this approach is, perhaps, banal, it was considered to provide a sufficient ontological basis on which to address the research question.

The approach adopted to the methodology of this research is that of post-positivism, being generally aligned with the scientific method but allowing that, in studying human activities and behaviours, the possibility of absolute certainty is unlikely, and impossible to guarantee (Creswell and Creswell, 2018:6). This approach is essentially deterministic, leading to a research approach based on empirical observation and measurement, with an emphasis on the verification of theory. It is also reductionist in the sense that it tends to lessen rather than increase the number of theoretical approaches available to explain a particular phenomenon.

The research was seen as interpretative in nature (du Toit 2014:63), dealing as it does with the analysis of planning documents in the form of the PA 2008 and other legislation, and the meaning and characteristics that academic writers have ascribed to that statute. A mixed-method approach

was thought to be the most suitable for the variety of material available for interrogation and interpretation.

The nature of English law, in which the Act is enshrined, raises an interesting ontological point, albeit one that underlies all legislation enacted by the British parliament. What the Act says is obviously contained in the words debated and voted on in parliament and enacted by the monarch. The meaning of the words may in general be obvious to all and not be contentious in any way. But some words or phrases may become the subject of dispute between some of the various parties affected by the operation of the Act. Decisions taken under the terms of the Act may be subject to judicial review (JR) as provided for in Section 118 of the Act and as had been the case on 16 occasions up to October 2019 (Maurici and Ziya 2019). JR considers only the legality of a decision, but it is possible – though this has not been the case so far – that JR decisions could be appealed through the divisional courts and the Court of Appeal to the Supreme Court, and the true nature and reality of the Act will not finally become apparent until the highest court in the legal jurisdiction of the country has decided what its wording truly means.

With regard to epistemology, a positivist approach might be thought the most appropriate means of proceeding, since the investigation was based for the most part on an existing act of parliament and a definitive written record of the parliamentary processes that brought it into being. However, in this case the strictly scientific doctrine espoused by JS Mill (Kenny 2010:761) and later by Comte (1865) has been modified by the logical imperatives of Karl Popper's 'The Logic of Scientific Discovery' (1959). Popper acknowledged that a writer's personal views and life experience would, to some extent at the least, shape the response to the material examined during the research process. In the present case, that would be true of both the written material examined and the interviews carried out in attempting to answer the research question. This epistemological standpoint equates to that of post-positivism: based on objective fact but with the acknowledgement of the possible influence of the researcher on the process of examination. This position equates to that adopted by writers on planning matters (Marshall

2021, 2013b; Allmendinger 2016; 2001; Lord and Tewdwr-Jones 2014; Clifford and Tewdwr-Jones 2013), albeit none makes specific mention of the epistemological standpoint of their works.

A key assumption of the approach taken in this work is that qualitative and quantitative approaches provide different types of data that together yield a justifiable conclusion (Creswell and Creswell 2018:217).

4.3 Areas of Investigation

The research question asks if the consenting regime for NSIPs established by the PA 2008 is a neoliberal measure; does it represent a practical advance in the way in which planning applications for infrastructure projects are determined; or is it both? Three attributes identified as characteristic of neoliberalism (reduced democratic accountability; centralising or decentralising, promotion of business empathy and orientation) are examined in seeking to provide an answer to the first part of the question.

The Act could be seen as a logical development of the approach used over many previous years in the consenting of major infrastructure project. This possibility suggests that an investigation into the history of the development of significant infrastructure in Britain, and particularly the genesis of the legal and administrative structures that accompanied these developments, could be more fruitful than simply looking at the Act and its commentators in isolation. This in turn suggested a review of the parliamentary measures, acts and regulations that had supported, defined and controlled infrastructure developments during the Industrial Revolution and subsequently.

The parliamentary process of debates, committee hearings and reports leading to the passing of the Act is recorded in Hansard, the formal parliamentary record. This provides a definitive and verbatim record of the legislators' publicly expressed thoughts and concerns about the bill. Content

analysis was used to investigate this material, the principles of which are described as

‘... a research technique for making replicable and valid inferences from texts (or other meaningful matter) to the contexts of their use.’

(Krippendorff 2019:24)

The bill was one of the first to be subjected to what was then a new parliamentary process involving the public interrogation of witnesses before the public bill committee that dealt with the committee stage of the legislation. This evidence, together with the written evidence submitted to the committee by a wide range of interested parties, provided a further means of assessing the nature of the Act.

Investigations were made into the way in which National Policy Statements (NPSs) designated under the Act have been scrutinised by parliament. The impacts of legislation enacted since 2008 on the workings of the Act were also reviewed, with particular regard to the Localism Act 2011, which removed overt political input from the decision-making process, one of the Act’s main original intentions. However, apart from that major change, the Localism Act left the consenting processes established by the PA 2008 unaltered.

4.4 Methodology

This section sets out the elements that make up the body of the research and provides an outline of the approach used for each. This has obviously been led by the type of information available to inform the investigation. The methods available were reviewed and those used were selected on the basis of what was most appropriate for each particular cache of material.

While planning may not be one of the social sciences, the approach and methods employed in those disciplines has been used in defining the research method for this thesis (Black 2002). The areas of inquiry have been varied, with a number of different strands contributing to the investigation. These have been based on the existing literature, the historical context of

planning legislation in Britain, the issues raised by the legislators during the passage of the Act through parliament, the oversight of the operation of the Act exercised by parliamentary, and interviews with a number of people who had been involved in the operation of the Act and in making academic comment on it.

The questioning of the neoliberal nature of the PA 2008 is, in the sense of querying what appears to be a generally accepted opinion, a problematising of what has been the view put forward by some of the academic commentators who have written about the Act (Marshall 2021, 2013b; Allmendinger 2016; 2001; Lord and Tewdwr-Jones 2014; Clifford and Tewdwr-Jones 2013; Rydin 2015). The literature review established that a generally held consensus among these writers was that the Act was a neoliberal measure, although there was little definition of what the term meant or why its application to the Act was appropriate and supportable. It had almost become a case of 'everyone knows that the Act is neoliberal' and, as such, this view is worthy of examination and challenge. This process is akin to problematisation in the sense that the accepted wisdom about neoliberalism is examined in detail to determine whether the term is valid and appropriate as a means of describing the Act (Crawford 1984). The process of examination involved questioning the nature of neoliberalism as portrayed in the planning literature, and an investigation of the validity of the claims made therein about the nature of the Act.

The design of the research method was indicated by the nature of the questions being posed in the research. There were two main functions of the exercise: to evaluate the nature of the PA 2008 against the characteristics of neoliberalism to determine whether the Act could logically be thought of as a neoliberal measure; and to identify the context in which the Act came into being. The formal methods of research design were investigated, with particular reference to Maxwell (2019), Creswell and Creswell (2018), du Toit (2016), and Robson and McCartan (2016). These texts were found to offer a logical means of approaching the construction of a method for the particular questions to be considered, given the range of different types of data available.

The review of written sources in the previous chapter found that there was only a limited discussion in published academic works of the alleged neoliberal aspects of the PA 2008. This meant that a quantitative analysis of the literature would be of little value, and it was concluded that a qualitative approach to the literature would be appropriate. One possible methodology lay through the analysis of the individual decisions made under the Act. Information available from the Planning Inspectorate's website provides details of the Examining authorities' reports and the secretary of states' decisions for all decided applications for Development Consent Orders under the Act. While this would provide a source of research materials for the investigation of various aspects of the decision-making process, the constraints of the Act mean that the topic areas covered by this material are limited and there is little or no possibility of matters outside those limits being raised in these documents. Hence to detect neoliberal influence at the level of individual applications is far less likely than would be the case in an investigation into the nature of the Act itself. The lack of judicial review applications relating to the principals of the Act perhaps indicates how the successful the process has been in removing such discussions from the purview of individual applications for development consent orders under the Act. The potential for research using material from decided applications is discussed further in Section 11.7 below.

These factors were not at play during the passage of the Act through Parliament, where there were no constraints, other than parliamentary procedure, on the issues raised. Here there was an opportunity to use quantitative methods to analyse the written parliamentary record. On this basis, a mixed-method approach using content analysis as its main tool appeared to be the most appropriate means of investigation. This approach has provided a maximum of flexibility, encompassing both predetermined and emerging methods, numerical as well as textual analysis, the use of both closed and open-ended questions during interviews, using all forms of available data, and allowing for interpretation across all databases (Creswell and Creswell 2018:16).

This approach conforms with the single-phase convergent technique as described by Creswell and Creswell (2018:218). Its key assumption is that while qualitative and quantitative data provide different kinds of information, together they converge to provide a coherent result and a valid overall conclusion. The authors also note that:

'The core assumption of this sort of inquiry is that the integration of qualitative and quantitative data yields additional insight beyond the information provided by either the quantitative or qualitative data alone.'
(Creswell and Creswell 2018:4).

4.5 Literature Review

The conclusion of the literature review in Chapter 3 was that there is no wholly satisfactory definition of neoliberalism that would provide a template against which to judge the Act as neoliberal or otherwise. However, a number of indicators were generally held to identify neoliberalism: democratic accountability, centralisation, and business empathy and orientation. The central part of the research effort was designed to discover whether these traits were so apparent in the Act's genesis and operation that it could be concluded that it was, in fact, a neoliberal measure.

The literature review noted the ever-widening use of the term 'neoliberal' and sought to find a definition of it in the academic literature. This attempt proved unsatisfactory because while the term had become one of disapprobation among general literature of a left-of-centre viewpoint, its use in academic literature rarely benefited from any satisfactory attempt to define the concept.

Against this background the way forward appeared to lie through some of the later work of Jamie Peck (2018), building on the earlier work of Boas and Gans-Morse (2009), which cast doubts on the continuing validity of neoliberalism as a meaningful universal academic concept. Gamble (2006) considered it more useful to deconstruct the concept and analyse the constituent doctrines and practices it was alleged to exhibit against particular

policies and practices whose definitions were already widely understood and accepted.

It was in this context that an examination of the Act against what are considered to be the key indicators of neoliberalism, such as centralising and decentralising tendencies, business empathy and orientation and a reduction of democratic accountability, has been carried out.

4.6 Historical Review

Literature dealing with current planning legislation generally sees the origins of the PA 2008 in the dissatisfaction arising from a small number of lengthy, high-profile and controversial planning inquiries (Sizewell B and Heathrow Terminal 5) and the government-sponsored Eddington (2006) and Barker (2006) reports that followed them (Marshall and Cowell 2016). The approach taken in this research has sought to identify a line of connection and continuity in the planning process leading back to earlier days of infrastructure development. It attempts to place the PA 2008 in a much broader context of parliamentary development, and to determine whether the Act should be seen in this light or as a unique and isolated piece of legislation. The object of the exercise was to determine whether or not the Act had been 'parachuted' into a continuum of planning legislation as a statute that took an entirely different, and possibly neoliberal, approach from all that had gone before it. The method adopted was to examine the planning legislation in order to identify, where possible, the Act's antecedents in earlier statutory measures and to identify possible traces of 'legislative DNA' that could be identified from those preceding measures.

The difficulties of any reporting process are inherent in attempts to provide the historical context for a piece of legislation: the bias or partial knowledge of the reporter has to be balanced against the advantages of contemporary views and insights. In the case of the major infrastructure works in Britain after the seventeenth century the methodology of a historical review process appears to be simplistic, in that it is essentially a review of the statutes

enacted by the English and later UK parliaments relating to those elements of major infrastructure that eventually came under the purview of the PA 2008. However, the admonition that ‘history is stories we tell about ourselves’ (Gunn and Faire 2012:1) supported the imperative to understand how this material should be collected and interpreted in order to arrive at an appropriate understanding of what it contained. The sociologist John Law has proposed the idea of ‘creative mess’ as the basis of a kind of anti-method. There is a contradiction, Law argues, between a world that is fluid, complex and messy, and research methods that aim to simplify and clarify that world.

‘Simple clear descriptions don’t work if what they are describing is not itself very coherent. The very attempt to be clear simply increases the mess.’ (Law 2004:2)

However, the level at which the historical narrative was to be interrogated, dealing with information gleaned for the most part from the parliamentary records and from histories of civil engineering projects, largely avoided these difficulties. Although there was a need to have some knowledge of the economic and social context of the development of infrastructure since the middle-ages, the need to investigate and understand these matters in depth was not thought to be necessary in addressing the research question. Works by Langford (2002), Robbins (2002) and Matthew (2000) provided insights into the societal, political and technological developments of the period from 1700 to 1951.

The historical review had two distinct starting points. First, it looked at the advent of major civil engineering projects in canals, turnpikes, railways, reservoirs and water supply and disposal systems, the invention of the gas and electricity production and distribution industries, and the development of ports, airports and motorways. Second, it looked at the development of parallel legal and parliamentary processes, initially to allow the promoters of infrastructure developments to obtain rights over land deemed essential for the project but that was not in their ownership or under their control. The origins of these developments appear to be founded in commercial

advantage overcoming a reluctance to accept and facilitate 'progress', and could, therefore, be characterised as the triumph of 'liberal' values over 'conservative'. The next legislative developments were less liberal in intent, in that they imposed regulation on the operation of the new infrastructure industries as they were established and developed.

The review dealing with the physical infrastructure was carried out using information gleaned from general historical sources in the Cardiff University library, the library of the Institution of Civil Engineers and other construction industry sources (Ferguson and Chrimes 2011; Hannah 1979; Falkus 1967; Federation of Civil Engineering Contractors 1956). In addition, a number of academic works dealing with the growth of the communication and energy industries in Britain during the Industrial Revolution of the 18th and 19th centuries were consulted (King 2007; Boyes and Russell 1977; Albert 1972).

The way in which parliamentary processes developed to accommodate the growth in infrastructure was, in part, set out in the same body of literature, and this was supplemented and expanded using the access to the statutes and statutory instruments afforded by UK government websites (UK Government 2022). These also gave access to the Hansard verbatim records of all stages of bills passing through the parliamentary process (Hansard 2022)

4.7 The Planning Bill 2008 in Parliament

The PA 2008 started life as the Planning Bill 2008 (PB, the Bill). It was introduced in the House of Commons for its first reading on 27th November 2007 and received royal assent on 26th November 2008. It was thought important to identify as accurately as possible the concerns and attitudes of the legislators involved in this process to determine whether elements of a neoliberal philosophy were at play in the legislative process.

The formal record of parliamentary proceedings set out in Hansard details in full the progress of the PB through the legislature, with a verbatim rendering of each stage in both the Commons and the House of Lords. During the year

of its passage through the legislature the Bill was the subject of more than three-quarters of a million words of debate and comment, the equivalent of perhaps 2,500 A4 pages of script. All of the data available from this source were analysed including the written evidence submitted during the committee stage of the PB and the transcripts of the oral evidence submitted to the public bill committee.

A number of different coding techniques were considered. Framework analysis and grounded theory approaches were not thought appropriate tools since it was not intended to develop any theoretical explanation from the analysis (Glaser and Strauss 2009). Narrative analysis required knowledge of the personal histories and motives of the participants in the debate which was not only unobtainable but unnecessary. (Reissman 1993). Content analysis, involving the systematic reading of texts and the allocation of codes to meaningful elements of that text was thought likely to be the most appropriate and effective approach to the analysis of the available parliamentary material (Krippendorff 2019, Hodder 1994). The method was inductive, with the coding structure depending on the material to be analysed, rather than deductive, using a coding structure predetermined before the start of the analysis. As a result, a flat coding frame was thought appropriate, allowing every significant theme raised during the process to be registered rather than using a predetermined hierarchy of importance between topics (Kukartz and Radiker 2019).

It was thought that the coding techniques suggested by Krippendorff (2019) and Saldaña (2021) could be used to analyse the written material available from the Hansard record. Krippendorff's 'problem-driven content analysis' was thought most closely to resemble what would be necessary. This approach is

'... motivated by epistemic questions about currently inaccessible phenomena, events, or processes that the analysts believe texts are able to answer. Analysts start from research questions and proceed to find

analytical paths from the choice of suitable texts to their answers.'

(Krippendorff 2019:384 -386)

Nine stages of analysis are set out: definition of the research question and identification of suitable texts; ascertaining stable correlations; locating relevant texts; defining and identifying sampling units; sampling a sufficiently large number of these units; developing coding categories and recording instructions; selecting appropriate analytical procedures; adopting standards for the reliability of generated data and statistical significance levels for the results; and allocating resources for each step of the proposed analysis. In the case of this analysis, the research question had already been established from the literature review; the relevant texts were the Hansard records of the legislative process; it was intended to analyse the whole of this material; the number of codes used would depend on the number of topics raised but were unlikely be large and thus would not require statistical analysis; and the resources available were obviously restricted.

Using the Hansard material places the analysis in the category 'in vivo'. As defined by Saldaña, this is coding using material 'that is alive', in the sense that the code consist of words or short phrases found in the qualitative data itself. Thus the code is the words of the participants in the process themselves Saldaña (2021:137). Saldaña considered that:

'In vivo coding is also quite applicable to action, participatory and practitioner research ... since one of the genre's primary goals is to adhere to the "verbatim principle, using words and concepts drawn from the participants themselves. By doing so the [researchers] are more likely to capture the meanings inherent in people's experience. (Stringer 2014:140)."' Saldaña (2021:138).

In assessing the material available in the parliamentary record, it was necessary to consider the multitude of contributors to the debates and committee hearings, each with a differing verbal or written style, each with a personal approach to the promotion of an argument. Because of the diversity of the points raised during the debates, it was considered that a detailed

textual analysis of every contribution would be too time-consuming and, in any event, unlikely to add to the insights provided by a simple and unambiguous survey of word frequencies. Bryman and Burgess (1994) point out that the criteria for selecting themes in quantitative analysis need to be properly established, and note that some commentators (Ryan and Bernard 2003) have recommended quantification as a means of identifying them (Bryman 2016). This approach was adopted in conformance with the interpretive approach set out in Section 4.4 above.

A high-level analysis was used in order to identify the main issues raised by the members of parliament who contributed to the debate on the second reading of the Bill in the House of Commons on 10th December 2007. The results of this process were then used to rank the topics identified in order of the number of times the issues identified were referenced during the debate. This was intended to give an insight into the concerns of the MPs called to speak during the debate, although it cannot be claimed to give any objective assessment of the importance of the topics discussed. The topics identified in this second-reading debate were then used as a template with which to analyse all the other stages of the parliamentary process in both the House of Commons and the House of Lords, including the written and oral submissions to the committee stages of the Bill's passage.

This word-counting was achieved by transferring the available text from the Hansard website onto a Word platform, so allowing a wordcount facility to be used. The actual words to be counted were identified by means of a review of the contributions made by members of parliament to the debate on the second reading of the Bill, which took place in the House of Commons on 27th November 2007. Each contribution was carefully read and a note made of its key themes, these being identified by a key word or words. This was a simplistic process with no attempt to analyse the arguments put forward by each contributor. It was only intended to identify the main areas of concern raised in each contribution to the debate: in some cases a single topic was raised, a number of topics in others. All topics were recorded, with no attempt to distinguish between those that might relate to the three identified neoliberal indicators and other topics. Given the vagaries of members of

parliaments' concerns there were inevitably many matters raised only by a single member, but these were all recorded. Words and expressions were interpreted using the accepted rules of legal interpretation, with ordinary words taken to have their ordinary meanings. The key words within the debate as a whole were then counted using the automatic facilities available on Word.

Although most themes were easily identified, there were instances where there were a number of different ways of describing the same, or a similar, element of concern, sometimes within the same contribution but more often across a number of different contributions. In these cases, the various descriptors were combined within a single code. So, for instance, climate change and low-carbon energy were counted together, as were wind power and renewable energy. The benefits of this approach were seen in a reduction in the total number of codes used and, in a situation where many of the codes used were sparsely populated, this was thought to be a reasonable measure to minimise the work involved in the process.

Having analysed the 'first pass' coding, a more detailed exercise was carried out to investigate further the topics that had been identified as those most often raised during the debate. Using the same technique, these main topics were further disassembled into their constituent parts and the process repeated. This was not done in all cases, since both written and oral submissions to the public bill committee were, by the nature of the parties involved, only concerned in their particular areas of interest. The 'second pass' was, therefore, confined to parliamentary debates.

It was anticipated that the analyses carried out would give a strong indication of the concerns of legislators about the context, purposes and content of the PA 2008: why it was being put before parliament, what it was intended to achieve and how it was to accomplish those aims. It was anticipated that a variety of concerns would be apparent from this first coding operation and that a second and more detailed exercise to examine those elements specifically related to neoliberalism and its indicators would provide a more

focused analysis. The same technique was used in analysis of the progress through the legislature of the Localism Bill 2011.

The results of these analyses were produced in tabular form in Tables 6.1 to 6.7 for each of the results for the House of Commons second-reading debate and subsequent stages of the process. Results for the House of Lords process are given in Tables 6.8 to 6.11, with those for the final inter-House process given in Table 6.12. After Table 6.2, all tables are shortened to include the five most frequently mentioned topics in addition to the three neoliberal indicator topics, with the full tables included in Appendix 7. Table 6.13 summarises the results for all the legislative stages of the passage of the PA 2008 into law. Table 6.14 give the same information for the passage of the Localism Bill through the process.

4.8 Parliamentary Scrutiny

The Planning Bill included measures for the establishment of NPSs within the new planning process for NSIPs. While the PA 2008 defines the nature and purpose of NPSs in the consenting of NSIPs, the NPSs themselves are brought into existence by the use of secondary legislation under the Act, with the resulting statutory instruments defining the NPS. These were to be produced by the relevant secretaries of state and it was anticipated that the parliamentary scrutiny of these measures would be one of the main focuses of concern among the legislators. The way in which these NPSs were scrutinised and authorised by parliament would be investigated by reference to the proceedings of the various select committees involved, and the subsequent actions of secretaries of state and of parliament itself. An examination of this process was carried out for each of the designated NPSs in order to understand how the commitments to parliamentary accountability written into the Act were discharged in practice. Again, this was accomplished by reference to the parliamentary record produced by Hansard and accessed through the parliamentary websites.

4.9 Interviews

Given the relatively short period since the PA 2008 was enacted, the possibility was investigated of discussions about the Act and associated topics with politicians who had been involved in its gestation, practitioners who had used its processes, and the academics who had written about it. While it would have been entirely possible to produce a thesis based purely on the research methodology described above, it was thought that these interviews would describe a useful background to the research and provide an additional insight into the realities of the legislation as it was enacted, used and reviewed. A further area of investigation would involve interviews with a variety of people who had a personal involvement with the operation of the Act. The interviews were not intended to provide material for a quantitative analysis of any aspects of the Act and so the numbers were restricted to those who might have a particular viewpoint gained from knowledge of, and experience in dealing with, the Act. The disadvantage of this approach was that interviewees might misremember their involvement with the process, or relate it in a way that gave a particular gloss to their recollections.

It was hoped that interviews with some of the people who had been involved in the genesis of the PA 2008 would provide some increased immediacy to the research project and a more rounded and complete understanding of the forces at play in the development of the Act. The names of proposed interviewees included the politicians who steered the legislation through parliament, as well as those who had opposed it. In order to provide as broad a view as possible of the nature and impact of the Act, the range of potential interviewees was extended to include current practitioners in infrastructure procurement, as well as leading academics who had written on the topic. It was hoped that the interviews would throw more light on the origins of the Act and give some further indication of the place of neoliberal thought in the process itself, both in the initial intention of the legislation and in its practical operation.

The preferred format for the exercise was the face-to-face interview, as this arrangement would allow as full a range of social discourse as possible to take place and would also maximise the benefits of the writer's experience in this area gained over many years of carrying out audits and other interviews. Request for interviews were made personally following, in as many cases as possible, an informal request from mutual acquaintances. An informal email was first sent to the potential interviewee containing an introduction and a brief outline of what was hoped to be accomplished during the interview. Attached to this was a letter formally asking for the recipient's agreement, setting out in some greater detail the intended process, noting that a list of formal questions would be provided prior to the interview if required, and giving a variety of contact details(See Appendix 4). It was made clear that it was hoped to make a digital sound recording of the interview, and permission was sought and given for this. Permission for the use of relevant quotations from the interviews was also sought, with the undertaking that these could be anonymised if the interviewee so wished. In the event, all of the interviewees were content for their views to be quoted and attributed to them. Each was asked specifically for consent for their words to be used in this work and each gave that consent. This approach was in conformance with the relevant application to the Ethics Committee of 1st August 2019 and their formal approval given on 16th September 2019. While the way in which material arising from the interviews was not a matter that the Ethics Committee specifically raised, the approach taken was based on the precautionary principle, ensuring that the risk of any future difficulties with regard to this material was minimised. The relevant documentation is contained in Appendix 6.

The list of outline questions prepared for the interviews contained matter framed for politicians, practitioners and academics as appropriate, and although in the event none of the interviewees requested prior notice of the formal questions these were used as a framework for the interviews themselves.. They provided an aide memoire for a free and open discussion on the general topic of infrastructure and the PA 2008, setting general bounds on the discussion without attempting to be overly prescriptive, and

providing a 'fall-back' in the unlikely event of topics for discussion not presenting themselves during the interview itself. This approach was felt likely to be the most productive with the group of distinguished individuals to be approached for interview.

While the concept of neoliberalism as a possible driver for the PA 2008 reforms was not included in the list of direct questions, it was intended to introduce the topic in such terms in cases where the interview might not otherwise elicit a discussion of the topic. This was to ensure that each interviewee gave some account of his or her understanding of the place of neoliberalism, if any, in the nature and intent of the Act and its processes.

The interviews took place at locations of the interviewees' choosing, generally, but not always, at their personal office, and lasted for about an hour. In all cases, permission was granted by the interviewee for the session to be recorded and an Olympus VN741PC voice recorder was used to do this.

While it was hoped to conduct face-to-face interviews wherever practicable, on the basis that communication consists of more than just speech, this proved not to be possible in all cases. Restrictions on travel and other measures to counter the impact of the coronavirus pandemic were put in place in the middle of the proposed interview programme. As a result, one of the planned interviews had to be rearranged as a telephone interview. A list of the interviewees is given in Appendix 4.

This change to the interview procedure led to a reassessment of the ethical considerations related to the research. In working remotely, many of the techniques used by interviewers to put their subjects at ease and to establish an appropriate and beneficial relationship between them are not available; the social niceties are more difficult to observe between strangers over the telephone than they would be during a physically adjacent discussion. Reflection on the background and experience of the interviewees again led to the conclusion that, while a remote interview technique was not ideal from the interviewer's point of view, it was very unlikely to create any difficulties

for the interviewees, and that if it did they would be well able to identify and express these in a way that would lead to a resolution of the difficulty.

While it was not considered that the interviewees would be anything other than truthful in their responses, the passage of time since the events under discussion might well have affected memories. Post-rationalisation may also become a factor affecting these narratives (Simon 1997), with politicians, and possibly academic authors, being susceptible to misremembering their motives and actions in light of subsequent events and developments, not the least of which would have been the effect of seeing the PA 2008 consenting process in action over the intervening years.

4.10 Ethics

The possible ethical issues connected with the thesis were considered at the initial stage of the research design and reviewed frequently to ensure that early assumptions remained valid throughout the work. The list of potential interviewees was drawn from among politicians who had been active in parliament during the passing of the Act, from among people who had worked at a very senior level in the infrastructure industry at that time and subsequently, and from the relatively small number of planning academics who had published material about the Act.

The reaction of potential interviewees to the proposed interview process was considered. It was not thought that any of the people invited to take part in an interview was obviously vulnerable, all of them having operated at the highest levels of their professions and callings over many years. They were not thought likely to feel intimidated or threatened by the interviewer, the issues to be raised or the types of questions to be asked. The only consideration here was that some of the politicians who had been involved in the genesis of the Act were now in their eighties. However, it was thought highly likely that they would not be reticent about declining a request for interview if they were not willing to take part and would not feel harassed by the request.

A proposal incorporating this interview process was made to the Cardiff University School of Geography and Planning's ethics committee in August 2019 and formal approval of the proposal was given on 20th August 2019. Details are given in Appendix 6. The interviews and subsequent actions were carried out fully in accordance with approvals granted.

4.11 Reflection

In carrying out this work, the writer has been very much aware that his own background and world view would have an influence on the nature of the research and of its conclusions (Creswell and Creswell 2018). In order to make the extent of this influence apparent, it is appropriate to set out the broader context in which the work was undertaken. An education in civil engineering has obviously been based on the scientific method, while professional practice has built on this approach, tempered with the need at all times to deal with practicalities, and in a 'common sense' manner. The writer's own views of what constitutes common sense and practicality are obviously personal and subjective, and so there is a need for these to be 'problematized' through a wider consideration and reflection on the way in which material is interpreted and conclusions reached.

Another factor to be considered is that of positionality (Herr and Anderson 2005; Rowe 2014), which comes into play because the writer has worked as an examining inspector for the Planning Inspectorate, taking part in a number of determinations of applications for planning consent made under the PA 2008. This inevitably means that the writer has a pre-existing position in relation to the social and political context of the study. Work in both science and social science shows that an observer will have an influence on the outcome of an experiment: in science this may be infinitesimally small and only of vital interest to the likes of Schrödinger's cat (Moore 1992); in the social sciences, this effect is perhaps greater.

A personal background and knowledge cannot be made to disappear or be entirely disregarded, but it is intended that their identification and an

awareness of the difficulties they carry with them in a work of this nature, together with a proper regard for the truths demonstrated in academic literature, will allow them to play a positive role in the thesis rather than providing a distraction.

4.12 Conclusions

The methodology derived for this thesis generally proved appropriate for the task, allowing, in particular, the detailed analysis of the parliamentary debates to provide much material for analysis and reflection. Interviews, on the other hand, proved overall to be something of a disappointment. While academics, and some practitioners were very willing to talk about their views on the Act and their involvement with it, politicians proved far more reticent, with none being willing to be interviewed. Perhaps politicians are not keen to review the benefits and disbenefits of legislation with which they have been involved so soon after its enactment. While this most enjoyable part of the project did not uncover new and relevant facts about the research question, it provided an excellent opportunity to hear the academic view of the part played by neoliberalism in the planning process and to hear from distinguished practitioners their lack of awareness of any overt part played by neoliberalism in the functioning of the planning system for major infrastructure projects.

The techniques adopted in this research were traditional in their methodology and were the subject of continuing review throughout the project. This approach enabled new aspects of the work to be assimilated into the process without disruption, and new directions for investigation to be considered properly within the context of the work as a whole. On this basis the research method could not be considered to be fully defined until after the end of the data collection and analysis phase of the work, and once it had become apparent that the interviews that could be carried out were not going to provide material of the hoped-for quality and extent. The research

method would be the subject of continuing reflection and amendment until the completion of the thesis.

Chapter 5 The Historical Context of Infrastructure Consenting

5.1 Introduction

This chapter looks at the historical context of planning legislation in Britain to determine whether the Planning Act 2008 (PA 2008, the Act) can be viewed as a logical development from previous enactments. In attempting to identify this context there is an obvious need to understand the processes of historical analysis at a level appropriate for the exercise in hand. The second series of George Macaulay Trevelyan memorial lectures delivered by E H Carr and published as 'What is History?' (Carr 1961) suggests that history is in itself something to be treated with a degree of caution. It is written by individuals with a particular and personal experience and view of the world, and this colours the writer's view of the past. He notes that he has read.

'... in a modern history of the Middle Ages that the people of the Middle Ages were deeply concerned with religion. I wonder how we know this, and whether it is true. What we know is that the facts of medieval history have almost all been selected for us by generations of chroniclers who were professionally occupied in the theory and practice of religion, and who therefore thought it supremely important, and recorded everything relating to it, and not much else.' (Carr 1961:8)

Carr goes on to quote R G Collingwood's assertion (1946) that history is concerned with a combination of the past itself and the historian's thoughts about it. He sees this as coming close to a position that denies the existence of objective historical truth, but concludes that for interpretations to be tenable, they must be related to objective truth. (Carr 1961:15-21).

A general picture of the societal and technological changes that have occurred in Britain since the start of the growth of modern infrastructure in the middle-ages has been provided by the various volumes of the Short

Oxford History of the British Isles, particularly those on the 18th century (Langford 2002), 19th century (Matthew 2000), and the first half of the 20th century (Robbins 2002).

In the case of the history of infrastructure development in Britain, there are, in the acts of parliament that enabled the establishment of turnpikes, the development of canals and railways and the rest of what is now considered to be nationally significant infrastructure, definite landmarks of objectivity to guide the task of interpretation. The economic and political context of these developments has been varied, with the earliest coinciding with the early development of capitalism (Calhoun 2002) and moving through periods of tight state control to Thatcherite neoliberalism and beyond.

It can be argued that such acts are subject to interpretation, and that their exact meaning only becomes certain when disputes about that meaning are brought to the courts and decided. While in some instances this is so, the generality of such law is not contentious in its interpretation, and the meaning of the legislation is not a matter of dispute.

The body of legislation dealing with infrastructure stretches over several centuries, and the laws used in controlling successive progressions in the array of infrastructure types can generally be seen to have developed from earlier legislative efforts. The concept of path dependence might be used to explain the way in which legislation has developed over time. Scott (2014:145) noted that David (1985) and Arthur (1994) first observed this phenomenon in various technological developments where the path of the process became difficult or impossible to change once it was started. North (1990) suggested that this process was applicable to the process of institutional change. Vergne and Durand saw the concept as founded in organisational research but considered that it was not yet a sustainable theory since

‘... ‘it does not causally relate identified variables in a systematized manner.’ (Vergne and Durand 2010:736)

They defined path dependence as

‘... a property of a stochastic process which obtains under two conditions (contingency and self-reinforcement) and causes lock-in in the absence of exogenous shock.’ (Vergne and Durand 2010:741)

They note that other historical factors may be at play in these situations and that it is possible to conflate these with path dependence. One such factor identified is that of institutional persistence, noting isomorphism and ‘stickiness’ of institutional patterns as the sustaining mechanism, with institutional stability and incremental change as the outcome of the process. This mechanism would seem to have a particular resonance with the functions of the British parliament and is considered more likely to be at play in the progression of infrastructure legislation than that of path dependency.

The research question asks if the origins of the Act are neoliberal, simply practical, or a combination of both. In examining the possibility that the rationale for the Act is purely practical, it is relevant to look at what preceded it and to ask whether it is merely a logical development of earlier consenting procedures based on the lessons of past experience. The Act did not fall fully formed onto the statute book: it is obviously the result of a perceived need on the part of legislators who have attempted to address the problems, difficulties, awkwardnesses and dis-utilities of earlier legislative efforts in order to provide for the needs of a developing society and its expanding technological ambitions, abilities and capacities. This section traces the development of the consenting system for the classes of major infrastructure works that eventually became subject to the PA 2008, so providing a context for the origins of the Act.

5.2 Beginnings

Accounts of the history of the planning process in England sometimes start from the agrarian and industrial revolutions in the 18th century and move immediately into the realms of the town and country planning acts (CPRE 2018). However, the origins the PA 2008 can be seen in earlier legislation that provided the means by which those revolutions were generated and that

allowed them to unfold through the agency of improved methods of transport: canals, railways and roads. These were the enablers of the developing modern economy, providing the means to transport fuel and raw materials to manufacturing sites, and to carry goods from factories to their markets. The rise of industry and of the great cities of the UK could not have happened without them.

Parliament's involvement with these developments was essential to provide the means of acquiring land or rights over land that could not otherwise be obtained by agreement between the potential developer and the relevant landowner. This was the case with turnpike roads (Albert 1972; Guldi 2012), canals (Skempton 2002; Boyes and Russell 1977), railways (Nash 2002) and reservoirs (Murray 1869), and with gas and electricity utilities (Falkus 1967; Hannah 1979).

5.3 The Rise of Town and Country Planning

The rise of industrial centres such as Manchester, Liverpool and Birmingham attracted people to work in the new factories and in the supply and service industries supporting them. The changes that followed the Representation of the People Act 1832 (the 'Great Reform Act') brought about the decentralisation of government and the establishment of a local government system that gave authority to the new county and borough councils, with duties and powers to control and develop an increasingly urban society. A rise in population brought with it problems of poor housing and the related public health issues of overcrowding, inadequate water supply, waste disposal and consequential poor health. The establishment in 1843 of the Royal Commission into the Health of Towns to investigate these conditions and the founding the following year of the Health of Towns Association eventually gave rise to parliamentary legislation to control these issues and to improve living conditions in the expanding industrial centres (Matthew 2000). In the meantime, the problem of water supply had become pressing, and the corporations of the major towns identified possible sources of water and took steps to secure them. This was done by the design and

construction of reservoirs and supply pipes that were consented by private acts of parliament. Three well-known examples were at the Thirlmere valley for Manchester, at Llyn Efyrynwy for Liverpool and the Elan valley for Birmingham. These were consented by the Thirlmere Act 1879, Liverpool Corporation Waterworks Act 1880 and the Birmingham Corporation Water Act 1892.

These local government reforms built on the ancient system of governance through counties, parishes and ancient boroughs. The Great Reform Act and the Municipal Corporations Act 1835 amended the franchise, the rules of suffrage and the rights of municipal corporations. County and county borough councils were established by the Local Government Act 1888, while a second tier of urban and rural district councils was established under a second Local Government Act 1894. Local government thus became responsible for the operation of local strategic services as well as the day-to-day provision of public services. At a county level, it took responsibility for education from 1902 and roads from 1929. It also dealt with the reorganisation of what became statutory undertakers' services (gas, electricity, water, etc.) against a background of commercial pressures on independent operators and the impact of technological advances. The disparate provision of water, gas and electricity services was often rationalised by local government, usually by the agency of acts of parliament and through the provision of municipal undertakers' enterprises. The earliest examples of this are seen in legislation to control town gas supplies (Falkus 1967) and, later, to regulate electricity supply and distribution by the Electric Lighting Acts of 1882 and 1888 (Hannah 1979), both utilities depending on local production or generation, with locally restricted distribution networks.

The provisions of the Housing, Town Planning, etc. Act 1909, the Housing Acts 1919 and 1930, the Town and Country Planning Act 1932 (TCPA) and the Restriction of Ribbon Development Act 1935 placed the immediate responsibility for planning firmly in the hands of the local authorities. But although the provision of infrastructure was firmly part of the TCPA process, it had already become apparent that some types of infrastructure, especially

linear schemes, were not ideally suited to an approach based on determination by a number of area-based authorities (Hannah 1979).

This history illustrates the point that planning has been strongly controlled by central government since its earliest days, and until the changes brought about by the devolution settlements for Wales, Scotland and Northern Ireland, the direction of the planning process was entirely in the hands of the Westminster government. A consideration of the measures taken since the start of the 20th century illustrates the point (see Appendix 2). The history also shows how the planning and consenting of major infrastructure, in the sense discussed above, was not a matter directly addressed in the progression of town and country planning legislation enacted in the 19th and 20th centuries. Schemes for major infrastructure projects such as turnpikes, canals, railways and reservoirs were still the subject of private members bills in parliament, while the provision of gas and electricity supplies had increasingly been the subject of specific parliamentary legislation.

The alliance of the parliamentary process with the interests of business can, of course, easily be detected in this early consenting process, in that, initially at least, all private bills were promoted in order to facilitate investment in infrastructure to provide a return for its backers. The public good may also have been a consideration. While local authority involvement in the production and distribution of town gas and electricity may have been attempts to regulate and improve the efforts of private enterprise, they were in effect operating businesses in an effort to make their locality more attractive both to private individuals and to corporate enterprise.

As noted previously, the Housing, Town Planning, Etc. Act 1909 permitted local authorities to prepare schemes '*for land in course of development, or likely to be developed*'. The schemes regulated both the layout and the density of developments and allocated land for roads, The schemes were to be developed under the close supervision of the Local Government Board¹

¹ The Local Government Board was a British government supervisory body overseeing local administration in England and Wales from 1871 to 1919. It was created by the Local Government Board Act 1871 and took over the public health and local government responsibilities of the home secretary and the Privy Council and all the functions of the Poor

(Booth and Huxley 2012). The legislation that established the concept of town planning in England placed central government at the heart of the process, with local authority initiative and action limited by the express powers defined in the act itself. In his review of the 1909 act, Herbert-Young (1998) noted that there was criticism of this approach at the time, but that opposition to the bill made it very possible that a measure giving powers to local authorities greater than those included in the bill would not have been passed by parliament. The promoters of the bill would have seen their approach as a first step towards increasing local authority involvement, a process that, in the event, was interrupted by the advent of the First World War. The 1909 act was seen as essentially a housing act, although it dealt with related but peripheral matters in the fields of landownership and local government powers. Booth and Huxley (2012) note Sutcliffe's comment that the 'Town Planning Act' has been described as a

'... successful move to place central government at the heart of the development of statutory planning powers in Britain viewed in the light of subsequent legislative developments.' (Sutcliffe 1988)

A total of 31 acts of parliament relating primarily to planning matters were passed by the United Kingdom parliament between the original 1909 act and the Localism Act 2011, with a number of additional acts relating purely to planning matters in Scotland. Of these, 18 were enacted after the election of the Conservative government under Margaret Thatcher in 1979. So in the 70 years between 1909 and 1979, 13 acts relating to planning were placed on the statute book, a rate of one every 5.4 years; in the 11 years of the Thatcher governments, from 1979 and 1990, the number of acts passed and bills prepared was 11, or one every year; while in the 21 years following, up to the demise of the Brown government in 2010, four acts were passed, returning the rate to 5.25, very close to the historical norm (Halsbury 2021). This illustrates the policy attempts of the Thatcher governments to remodel

Law Board, which was abolished. In 1872, the Home Office transferred administration of the turnpike and highway acts, Metropolis Water Act 1852 and the Alkali Act 1863 to the Board. The Board was abolished on 24th June 1919 under the Ministry of Health Act 1919, with all its powers and duties transferred to the new ministry (Bellamy 1988).

and define the planning process. It also shows that these administrations, although characterised as neoliberal, were not necessarily entirely devoted to deregulation.

The development of the planning environment during the 20th century and beyond presents a consistent theme of central government deciding on the means by which planning consents are granted and laying down the criteria to be used in deciding whether consents should be granted. Changes of government policy are given effect by legislation. The increase in direction and regulation post-1979 appears to be at odds with the roll-back ethos of the early neoliberal agenda of the Thatcher years. It could, however, also be argued that these acts represented the removal of restrictive legislation and its replacement by a more business-friendly legislative environment. This approach corresponds well with the provision of a sympathetic legislative framework within which neoliberal advances could be made.

5.4 Origins of Infrastructure Planning

A review of 19th-century industrial developments explicates the historical development of planning, and the divergence of the modalities of infrastructure planning from those of other more local planning needs.

The expanding need for major infrastructure projects of the type that eventually became subject to the PA 2008 engendered changes in civic society and its organs of governance (Daunton 2002). It also showed that locally based systems could not provide an appropriate means of managing major infrastructure developments, and that other means of controlling this type of project had to be developed, beyond '*the anarchy of local autonomy*' (Webb and Webb 1922: 353). This indicated at a very early stage in the gestation of the British planning system that there were advantages in developing separate systems to control locally based planning needs and those with a wider geographical scope.

In 1667, the way in which private members' bills were brought before parliament was referred to the Lords committees for privileges, because of

concerns that, without proper process and scrutiny, private individuals might suffer because of the apathy or ignorance of MPs (House of Lords Journal 1667). After a further review in 1794, the House of Commons ordered promoters of canal and river bills to deposit documentation with the House sufficient to enable members to take informed positions on the merits of the bill under consideration (Parliamentary Records 1794; Bond 1959).

Promoters of turnpike bills were required to deposit estimates of cost and details of subscribers to the scheme. This requirement reflected concerns that bills were being passed by parliament without suitable examination and in general ignorance of their details. Over the years, orders were passed covering other similar bills, such as those relating to railways and harbours. The details required were:

- a list of owners and occupiers of property to be acquired compulsorily, with a note as to whether they assented, dissented or were neutral;
- maps of the areas affected, with the proposed works marked on them;
- plans showing the proposed works and the land to be acquired;
- signed plans produced in evidence during committee proceedings;
- sections showing the level of the ground in relation the works;
- a book of reference containing for each property the names of owners, occupiers and lessees affected by the bill;
- a formal declaration that bill promoters had the necessary resources;
- a signed estimate of the cost of the scheme;
- a programme of works to scheme completion;
- details of the number of people to be displaced in cases involving compulsory acquisition; and
- a copy of the contract where finance was to be raised by subscription

This detailed information was to be submitted by the promoters of schemes seeking the agreement of elected members to a private act of parliament to enable it to proceed, and is easily recognised as a direct forerunner of the requirements currently included in the PA 2008 itself, in regulations made under the Act, and in National Policy Statements (NPSs). For example,

paragraph 22 of the government's guidance document on compulsory acquisition of land (DCLG 2013) advises that:

'Applicants must also ensure that they comply with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 ("the Applications Regulations"). These contain specific requirements where compulsory acquisition is sought, including the following information:

- *a statement of reasons ...;*
- *a statement to explain how the proposals contained in an order which includes authorisation for compulsory acquisition will be funded ...;*
- *a plan showing the land which would be acquired, including protected land and any proposed replacement land ...;*
- *a book of reference'*

This is the earliest indication that the PA 2008 is a measure developed from a succession of earlier legislative measures dealing with infrastructure. Parliamentary draughtsmen of both modern and earlier times have not been unaware of the management consultants' standard procedure of building on what worked successfully on a previous occasion. It is also an indication of a recurring theme in the development of parliamentary procedure: the desire of parliament not to become involved in repetitive and detailed legislative measures. This has culminated in the extensive use of secondary legislation in the form of statutory instruments (SIs) to detail the way in which acts of parliament are implemented in practice. The removal of an act's modalities from direct parliamentary input could be seen as a diminution of democratic control, albeit that parliament maintains a level of scrutiny over SIs. Its use is not, however, a new one, dating from at least the early 19th century and so cannot of itself be considered a specifically neoliberal measure.

5.5 The Development of Infrastructure Consenting

As has been noted earlier, the consenting of projects for the construction of railways was the subject of private acts of parliament, each one specific to the particular project. With the developments of tramways in Britain during the 1860s, it was recognised that a different approach would be needed to accommodate burgeoning demand, and this resulted in the Tramways Act 1870, a new initiative in the consenting of linear infrastructure (Gould 2012). In line with precedent, parliament dealt with what was considered to be an unmanageable increase in its workload by devising a means of delegating it to others, while reserving the decision-making powers. This involved resurrecting a defunct government body, the Board of Trade², and delegating to it the power to examine the acceptability of proposed tramway projects, subject to the specific terms of the act with regards to various practical matters.

The Board could issue provisional orders under the act allowing promoters to proceed with their project. However, the acquisition of land by compulsion was prevented until the order had been ratified by parliament through the passing of an act in the same form as a private act of parliament. This measure, in effect, set out the parameters within which a tramway project

² The Board of Trade was originally established as a sub-committee of the Privy Council under James I to provide advice on technical and practical problems relating to the running of the government. It progressed through various configurations and ranges of duties and by the second half of the 19th century fulfilled an advisory function on economic activity in the United Kingdom. Among other duties it dealt with legislation for patents, designs and trademarks, company regulation, labour and factories, merchant shipping, agriculture, transport and power. It became a means of relieving parliament of some of the increasing administrative burden resulting from new legislation to control and regulate the societal changes occasioned by the Industrial Revolution and a growing urban population. As the Industrial Revolution expanded, the work of the board became progressively more executive and domestic, and from the 1840s a succession of acts of parliament gave it regulatory duties including those concerning railways, gas and electricity supplies, merchant shipping, and joint stock companies (National Archives (A)).

would be acceptable to parliament and then delegated the task of assessing the project against those criteria to the Board of Trade. The Light Railway Act 1896 was introduced to facilitate and simplify the process of consenting this class of railway project, which were, in effect, very similar to tramway schemes. It established 'light railway commissioners' who were charged with examining proposals to determine their alignment with the requirements of the act and would produce a draft order if they found the scheme to be acceptable. This would be submitted to the Board of Trade for confirmation, but if the board considered the scheme too big or likely to affect an existing railway adversely, or for any other reason, it could decide the scheme ought to be submitted to the existing private act procedure. Confirmation of the draft order by the Board of Trade would have the same effect as if the order were enacted by parliament (Hannavy 2019).

Early gas and electricity projects were small-scale and regulated by the local authority within whose areas the project lay. As the technology developed and the economies of scale became more apparent, the need to provide consenting and regulating powers across local government administrative boundaries became more obvious, as did the impracticalities of pursuing a private act procedure for the multitude of schemes being promoted throughout the country as the utility of new developments in the use of gas and electricity were realised and accepted. A system based on the principles of the Tramway Act 1870 was adopted in the case of gas and electricity supplies. The supply of electricity was first regulated by the Electric Lighting Act 1882, as amended by the 1888 act of the same name, which ensured that all generators of electricity had to be licensed by the Board of Trade. The Electric Lighting Act 1909 gave electricity generators compulsory purchase powers, subject to their confirmation by the Board of Trade in a provisional order. For both acts, the board was required to hear objections to a proposal and could either determine that the project should be the subject of a private act of parliament or refer its proposed order to parliament for confirmation. Similarly, the production and supply of gas was controlled by the Gasworks Clauses Acts of 1847 and 1871. These measures of control were in addition to the numerous private acts of parliament that had enabled

the formation of joint stock companies to promote and establish the use of gas lighting during the first part of the 19th century (Williams 1981; Falkus 1967).

For other types of linear infrastructure, the difficulties caused by projects lying within a number of different geographical planning areas were resolved by various acts of parliament. These gave highway authorities additional powers under the Highways Act 1959, while the Pipelines Act 1962 dealt with all pipelines other than drain, sewers, heating pipes and pipes associated intimately with business or manufacturing premises. By default it included long-distance water, gas and fuel oil supply lines, and made it illegal for a cross-country pipeline to be constructed without the consent of the relevant secretary of state. It also provided that the granting of authorisation by the secretary of state under the Pipelines Act would stand as deemed consent under the TCPA. The Transport and Works Act 1992 resolved these difficulties in relation to railways, canals and ports, and will be discussed in greater detail later in this chapter. The ancestry of the measure was referred to in detail during the debate on the third reading of the measure in the House of Commons underlining the progression of principles first codified in the Tramways Act 1870 and further developed in the Light Railway Act 1896 (Hansard 1992b).

These examples illustrate the establishment and continuation of two distinct though related approaches to planning: a bifurcation of the direction of planning, with linear and utilities schemes generally being dealt with by private acts of parliament and, later, by statutes specific to the type of development proposed, and non-linear schemes for housing and related matters being dealt with under the TCPA powers in place at the time.

One effect of the Town and Country Planning Act 1947 was, among other things, to bring about what was essentially the nationalisation of land use. It removed the ability of a landowner unilaterally to change the use to which his or her land was put by making such change subject to TCPA processes and permissions. The situation had moved from one where consent was only relevant if the proposed development required the use of land owned by

someone else to one in which any development required permission, even if the land were wholly owned by the scheme promoter.

Major planning applications could present difficulties to local authority planning departments on a number of different grounds, especially when the application related to a major infrastructure project: the scale of the project could overwhelm the resources available to the local authority, or the nature of the scheme might be such that it would be unacceptable at a local level, although desirable at a national level, or the political complications of the scheme locally might be thought best avoided by finding some other means of dealing with it.

A procedure known as 'calling in' meant that the relevant secretary of state could decide to determine the application outside the local authority process, although this process was not formalised until the advent of the Planning and Compulsory Purchase Act 2004. In doing this, he or she could decide to hold a public inquiry or not, as was appropriate in the circumstances, although if the local authority were an objector to the project, an inquiry would always be held.

Again, some developments stood outside this regime as a result of arrangements put in place by earlier legislation. Compulsory purchase of land for the construction of electricity generating stations was sanctioned by the Electric Lighting Act of 1909, where the secretary of state would decide whether a public inquiry should be held before an order could be made. It was certainly the case that several early applications for nuclear power station developments were decided by the secretary of state without the benefit of a public inquiry.

Additional complications for the planning process sprang from the nationalisation of most nationally significant infrastructure, including railways, canal, ports, electricity and gas undertakings and major airports, immediately after the Second World War. This meant that the secretary of state who was responsible for the promotion of the scheme could also be responsible for deciding whether consent should be granted for its construction. This situation would, not unreasonably, have ensured that the minister was more

likely to be minded to hold a public inquiry into the application, so that his or her decision could be seen to be based on the report of independent Inspectors and not appear to be made solely on the basis of departmental efficacy. These factors exacerbated the difficulties of dealing with the consenting of major infrastructure projects through the TCPA system. In an environment where government diktat was increasingly likely to be challenged, and the need for transparency in policy and process was becoming a requirement of good governance, it would become ever more difficult to operate a consenting process for nationally significant infrastructure projects based on the disparate procedures developed over the previous century and more.

5.6 Planning After 1979

The changes in economic policy instigated by the Thatcher government of 1979 have been seen as a move away from the post-war Keynesian model towards the adoption of a radical political and economic model based on a more liberal approach. This approach has subsequently been characterised as neoliberal, although this was not necessarily the description applied to it at the time.

After 1979, 'planning' was a frequent subject for parliamentary legislation, but the number of measures enacted perhaps ran contrary to the generally accepted neoliberal deregulation mantra. Presented here is a short review of legislation relating to the planning process enacted during the 11 years of the Thatcher premiership and during subsequent administrations. The purpose is to identify changes that have affected the way in which the consenting of major infrastructure projects was carried out during this period. Specific details of each of the planning measures enacted after 1979 are given in Appendix 2.

During the Thatcher administrations, 11 measures relating to planning were enacted but no specific reference to infrastructure was made in any of them.

In the seven years of the Major administrations, between 1990 and 1997, a further three measures were enacted. Again, there is no specific mention of infrastructure in these acts, albeit the Transport and Works Act 1992 deals specifically with some of the types of development (railways and harbours) that were eventually included in the list of infrastructure schemes to be consented under the PA 2008, subject to the schemes exceeding the capacity limits defined in the Act and otherwise complying with the specified conditions. The Planning and Works Act 1992 is the subject of further analysis later in this work.

A further four measures were enacted by the Blair and Brown administrations, between 1997 and 2010. Again, with the obvious exception of the PA 2008, the other measures enacted during this period made no mention of infrastructure.

Under David Cameron, from 2010 to 2015, first during the coalition government and subsequently under the Conservative administration, five more planning measures were enacted. This last group of acts brought about a considerable change in the nature of the PA 2008, both in terms of the way in which its processes operated and the areas in which they were to operate. The impact of these acts on infrastructure planning will be examined in detail later in this work.

Following Cameron, up until 2022 no further planning legislation has been enacted.

5.7 The Gestation of the Planning Act 2008

Public inquiries into planning matters could be established under a number of different ordinances, but were controlled under the Tribunals of Inquiry (Evidence) Act 1921, subsequently repealed and replaced by the Inquiries Act 2005. Inquiries were adversarial in nature and could examine any evidence that the inspector was minded to allow. Both promoters and objectors were able to cross-examine witnesses in a process that mirrored in considerable detail the practices of the criminal courts. By the late 1990s,

inquiries were felt by many observers, including the Confederation of British Industry (Marshall 2011a) and the House Builders Federation, to have become excessively long and, as a result, the government was subjected to pressure to rationalise and speed up the inquiry process. The two classic cases quoted by critics of the status quo were the inquiries into the construction of a second nuclear power station at Sizewell on the Suffolk coast, and the development of a fifth passenger terminal at London Heathrow Airport.

Many of the earlier generation of nuclear power stations had been consented without recourse to public inquiries, but the type of installation proposed for Sizewell B, together with the changed and changing public attitude to environmental concerns in general and to nuclear energy in particular, ensured that a full public inquiry was held in this instance.

The Sizewell B inquiry was a hybrid, in that the application for development was made under Section 2 of the Electric Lighting Act 1909, since consent was required for the site operation licence, and planning consent for the overall development was also required from the secretary of state (O'Riordan et al 1988:92). The inquiry was held under the provisions of the Electricity Generating Stations and Overhead Lines (Inquiries Procedures) Rules 1981 (O'Riordan 1984). Because it was proposed to use a new type of nuclear reactor in the project (a pressurised water reactor, or PWR), for which the government had given approval in principle only, it was inevitable that the inquiry would have to deal in detail with the issues surrounding this new technology. In the event, the inquiry lasted 340 days and, rather than simply examining the specific scheme at hand, became an investigation into the principles of nuclear power generation and its general desirability.

While the then secretary of state did not consider the use of PWR technology to be a relevant matter for the public inquiry, there was no constraint placed on the inspector preventing his investigation of the whole issue of electricity supply planning. In the event, the inquiry became a wide-ranging review of

‘... the future of the coal industry, the choice of reactor, the relationship between increased supply and lower demand, the improved efficiency of existing electricity use, and the role of the electricity industry within the government’s total energy policy. (O’Riordan et al 1988:5)

It is suggested that the decision not to constrain the scope of the inquiry was part of a deliberate attempt by the government either to use the inquiry to clarify what policy relating to nuclear power should be, or to avoid the charge of its being wedded to nuclear power as a means of electricity generation, and specifically to PWRs, at a time when anti-nuclear sentiment was becoming more widespread among the electorate (O’Riordan et al 1988:1-5). This conflation of purpose was used by critics to press for changes in the planning system.

The public inquiry into the Heathrow Terminal 5 development lasted 525 days in total, setting a new record and attracting opprobrium from a wide range of commentators as a result. The inquiry was split into hearings on specific topics, starting with the need for the development (which took 123 days) socioeconomic impacts, planning policies and land-use considerations. It then moved to specific topics, such as surface access (117 days), noise (73 days), air quality, public safety and construction (Pellman 2015:7). The time taken for the inquiry should, however, be judged in light of the level of design and preparation that had been undertaken before the application for planning consent was made.

The Terminal 5 application was submitted in February 1993 by the British Airports Authority (a private company floated on the stock exchange in 1987) and was called in for determination by the secretary of state for transport a month later. At this stage the master planning for the scheme was not completed, the planning and design of the terminal buildings and aircraft stands were still in progress and the transport links had still to be finalised. The inspector for the inquiry was appointed in March 1994 and the inquiry itself was formally started in May 1995. Between the initial application and the start of the inquiry, BAA submitted a further nine planning applications and a statement of case, in addition to road and rail orders and river

diversion orders. By the close of the inquiry, the number of separate applications and draft orders to be considered had risen to 37, confirming that the scheme as submitted for consideration was nowhere near complete.

The inquiry was split into 11 topic headings for ease of management. These were: the need for Terminal 5; development pressures and socioeconomic impacts; development plan policies and land-use considerations; surface access; noise; air quality; public safety; the fuel farm; construction; associated applications; and conditions. Several of these topics covered areas where no national guidelines had been developed either in terms of national policy or technical specification. The decision letter of 20th November 2001 pointed out a number of instances where the government was on the point of producing guidance or direction in some important areas. It notes in paragraph 18 that

‘.. it is the Government's intention to prepare a UK airports policy looking some 30 years ahead.’

and in paragraph 60 that

‘The Secretary of State has already announced his intention, independently of Terminal 5, to conduct a new study of aircraft noise and the perceptions of people subject to it.’

On air quality, the secretary of state (who coincidentally was also the Deputy prime Minister at the time) recited with approval the inspector's regard for the limits set out in the then current European Union directive on air quality but decided that more regard should be paid to the time available for these limits to be met (ODPM 2001a).

Paragraph 14 of the inspector's summary report notes that

‘The Department of the Environment, Transport and the Regions gave evidence on several occasions during the inquiry. This evidence was intended to assist me in understanding Government policy on matters such as aviation, sustainable development, public transport, roads, noise, air quality and public safety. The Civil Aviation Authority also appeared in a neutral capacity to assist me in explaining various matters including

the operations of the airport, the demand for air travel, passenger benefits and public safety.' (ODPM 2001b)

The list of policy topics on which government departments advised the inspector included some of those generally pertinent to all major infrastructure developments, as well as those specifically relevant to the Terminal 5 scheme. This list, together with other topics covered in the inspector's report, is a direct precursor of the list of topics that must be addressed during an inquiry and which is included in each of the NPSs produced under the PA 2008. While these are specific to each NPS, the generic topics included in each list are: general principles of assessment; environmental impact assessment; habitats regulations assessment; alternatives; criteria for 'good design'; climate change adaptation; pollution control and other environmental protection regimes; common law nuisance and statutory nuisance; safety; security considerations; health; air quality; carbon emissions; biodiversity and ecological conservation; waste management; civil and military aviation and defence interests; coastal change; dust, odour, artificial light, smoke, steam; flood risk; land instability; the historic environment; landscape and visual impacts; land use including open space, green infrastructure and green belt; noise and vibration; impacts on transport networks; and water quality and resources.

The Terminal 5 inquiry heard from 700 witnesses, generated 100,000 pages of transcripts, took eight years from the date of the application to the granting of government approval and cost £80 million. Although it is not clear from the contemporary reports whether this figure represented only the cost to the public purse or included the costs of promoters and other parties, the public view, as expressed in newspaper comment, was that the whole process was expensive and overly long.

By the end of the 20th century, it was becoming increasingly obvious that many major infrastructure projects would be subjected to intense and prolonged examination at public inquiries, including examination of the fundamental assumptions that underlay their genesis. In a number of instances, decisions made using this process gave rise to legal appeals that

led eventually to rulings by the House of Lords. (At this time the Lords was the highest Court of Appeal in the English legal system, but that function has now been assigned to the Supreme Court.)

A Green Paper, 'Planning: Delivering a fundamental change' (DTLR 2001a), averred that investment in major infrastructure is essential for continued economic growth, but that the process for making planning decisions about these projects was expensive and highly adversarial and took too long. It sought a better system, increasing the speed of the process while safeguarding the quality of decision-making and public consultation and involvement. It noted that proposals for a new approach were announced in July 2001. These included clear statements of government policy on investment priorities, a framework for identifying investment needs and strategies, arrangements for prior public consultation, approval of projects in principle by parliament before detailed aspects were considered by a public inquiry, a better public inquiry procedure and better arrangements for compulsory purchase and compensation. These intentions can be seen as reaffirming a centralising role for the planning process and a more certain environment in which developers could assess the planning risks of any new project. The intention to provide 'better' arrangements for public inquiries, compulsory purchases and compensation can be seen in the same light, as a means of meeting and defusing objection with the aim of securing more certainty in the overall process. A second Green Paper (DTLR 2001b) made additional proposals with respect to major infrastructure projects.

The consultation process following these Green Papers gave rise to a White Paper that eventually became the Planning and Compulsory Purchase Act 2004. This dealt briefly with major infrastructure projects, in Section 44, where a process was established for the calling-in of applications for such projects by the secretary of state, although no definition of what would constitute such a project was given and this remained a matter for the secretary of state to determine in each particular case.

The government responded to the apparently increasing dissatisfaction with the planning process generally and with the planning process for major

infrastructure projects in particular by setting up an inquiry into land use planning under the chairmanship of Kate Barker, the appointment being made jointly by the Chancellor of the Exchequer and the Deputy Prime Minister. The Chancellor and the Secretary of State for Transport also commissioned a national transport study under Rod Eddington. The Barker Report on Land Use Planning (2006) proposed an entirely new method for consenting nationally significant infrastructure projects (NSIPs), although there were similarities to the process used under the Transport and Works Act 1992. The Eddington Transport Study (2006) entirely supported this approach. The proposed methodology was included almost without alteration in the Act.

A 2007 planning White Paper, 'Planning for a sustainable future' (DCLG 2007) gave rise to procedural improvements to the 2004 act, as well as the possibility of producing a new way of determining development and infrastructure projects, including those that are now defined as NSIPs. It built on the recommendations of the Barker and Eddington reports, the Stern Review on the Economics of Climate Change (2006) and the Lyons Inquiry into Local Government (2007), and was thus part of the genesis of the PA 2008.

A further level of planning input has remained outside the processes described above and is, essentially, a very direct descendant of the procedures of the 18th and 19th centuries. The hybrid instrument process is one whereby the government introduces a bill into parliament on behalf of a non-parliamentary body, such as a local authority or a developer of major infrastructure. These are 'hybrid bills' in that they propose laws that provide a benefit to the public at large but also affect the private interests of a large number of private individuals or organisations. These bills follow the same process as private bills as they begin their passage through parliament, thus giving individuals and bodies an opportunity to oppose the bill or to seek its amendment before a select committee in either or both Houses. Once this stage is passed, the bill then proceeds as any other public bill.

Table 5.1 Parliamentary Hybrid Acts Relating to Infrastructure Since 1980

Title	Date of first reading	Date of Royal Assent	Days to Assent
Conwy Tunnel (Supplementary Powers)	10 th Nov 1982	28 th March 1983	139
Channel Tunnel	17 th April 1986	23 rd July 1987	463
Dartford-Thurrock Crossing	1 st April 1987	28 th June 1988	455
Severn Bridges	27 th Nov1990	13 th Feb 1992	444
Cardiff Bay Barrage	4 th Nov 1991	05 th Nov 1993	733
Channel Tunnel Rail Link	23 rd Nov1994	18 th Dec1996	757
Crossrail Bill	22 nd Feb 2005	22 nd July 2008	1247
High Speed Rail (London - West Midlands)	25 th Nov 2013	23 rd Feb 2017	1187
High Speed Rail (West Midlands - Crewe)	17 th July 2017	11 th Feb 2021	1279

Source: Sessional Information Digest, Sessional Returns, Weekly Information Bulletins in 'Hybrid Bills receiving Royal Assent since 1979 'House of Commons Library Tuesday, January 19th 2010 and <https://www.parliament.uk/business/bills-and-legislation/current-bills/hybrid-bills/> accessed 7.3.19.

Historically, hybrid instruments have often been used by government on behalf of railway companies and transport agencies to obtain authorisation for major projects deemed to be in the national interest, but which would affect a large number of private interests. Before the passing of the Act, hybrid instruments were used to consent many of the largest infrastructure projects, including the Channel Tunnel, Crossrail, the Dartford crossing and the Cardiff Bay Barrage. From Table 5.1 above it appears that the process could well have been quicker than the traditional TCPA route for projects consented up to the turn of the 20th century. However, it is not possible to assess this accurately because the overall times for the preparation of the submissions for this process are not apparent. The three projects subjected

to hybrid bills since 2000 have taken substantially longer than their predecessors and show no significant improvement over the Sizewell B or Heathrow Terminal 5 timescales. This may be an unfair comparison owing to the very large scale and complexity of these linear schemes, which would probably have been the subject of a number of separate inquiries under TCPA procedures, and almost certainly so under the PA 2008 procedure.

5.8 Conclusions

It is readily possible to observe an unbroken line of development in the consenting of NSIPs running from medieval times up to the present day: from the river improvement acts in 1425 and the Bridges Act of 1530 through to the PA 2008 and beyond. The impetus for change and development has in almost every case been that of commerce, and the improvement of communications necessary to enable 'business' to expand and flourish. The desire to acquire rights over land not owned or controlled by the promoter of a project in order to construct and operate that project has involved parliament in authorising the necessary permissions through the use of private acts of parliament. With the increasing number of these acts came a codification of the process to allow parliament to examine and determine the issues properly. As new forms of infrastructure were developed in the 19th century, parliament introduced public acts to regulate them in general terms, and a process involving the Board of Trade to deal with many of the smaller projects. The mechanisms established during this period were used in the drafting of the Transport and Works Act of 1992, albeit with some changes to the procedures for parliamentary oversight, and these continued with developments into the PA 2008, with further changes to the authorisation process.

On the basis of the facts set out above it is possible to view the PA 2008 as part of a succession of measures to provide a legal framework for the acquisition of land and parliamentary approval for the construction of infrastructure projects. Its processes have historical roots in parliamentary procedures established in the late 17th century, and there are direct

connections with acts of parliament dating from the Tramways Act 1870 (Gould 2012), the Light Railway Act 1896 (Hannavy 2019) and the Transport and Works Act 1992 (Hansard 1992a; 1992b). While much has changed in terms of the type of infrastructure being consented, the basic architecture of the process is one that has been built upon at each stage of its development, rather than being demolished and a new edifice erected in its place.

Looking back over the history of this period it is apparent that the progression of infrastructure consenting legislation has taken place against a changing background of philosophical, political and social mores. The progress of infrastructure planning legislation followed a generally coherent path through all of the turmoil of this period and can be seen as representing logical and practical developments of an already established theme. The historical perspective can therefore be seen to provide a fully valid conceptual framework within which to examine the Act. At the same time it is important to allow that societal changes impinge on the nature of legislation, and that each statute will to some degree inevitably reflect the nature of the environment in which it was fashioned.

The final chapter of this work will seek to balance the arguments between the historical and neoliberal interpretations of the Act and draw conclusions about the place of neoliberalism in the origins of the PA 2008, and the practicality or otherwise of the measure in producing defined and time-limited procedure for deciding on the issue of DCOs for NIPs for which consent under the Act is sought.

Chapter 6 The Planning Act in Parliament

6.1 Introduction

In addressing the research question ‘Is the consenting regime for nationally significant infrastructure projects established by the Planning Act 2008 (PA 2008, the Act) a neoliberal measure; does it represent a practical advance in the way in which planning applications for infrastructure projects are determined; or is it both?’ it appeared logical to review not only the Act itself but also the intentions of the legislators as expressed in the various stages of the parliamentary process that led to the enactment of the Planning Bill.

It was thought unlikely that the terms ‘neoliberal’ or ‘neoliberalism’ would be much in evidence during the legislative process, the concept being of greater currency in the academic circles of economics and social sciences than among politicians. The search, therefore, was primarily for the indicators of neoliberalism that had been identified above in the literature survey: democratic accountability, centralisation and decentralisation, and business empathy and orientation.

The original consenting process under the Act was used only once (the Rookery South Energy from Waste Generating Station consented on 13th October 2011 (PINS 2011)) before it was amended under the provisions of the Localism Act 2011. The process thus produced was an amalgam of provisions contained in the two acts and it was thought desirable to extend the analysis of the legislative process to include the relevant elements of the 2011 act. This enabled a full overview to be taken of all the legislation under which the consenting of nationally significant infrastructure projects (NSIPs) is currently undertaken.

This chapter consists of a detailed examination of the legislative process using the verbatim reports in Hansard, the official parliamentary record. The process followed the traditional path of legislation in the United Kingdom parliament, as described in detail in Erskine May Parliamentary Practice

(2019). The chapter looks at each stage of the process in both Houses of Parliament, dealing first with the PA 2008 and then with the relevant sections of the Localism Act 2011. It then goes on to consider the results of these analyses and to suggest some reasons for them.

The way in which legislation is passed into law by parliament has remained largely unchanged for several centuries. The process is briefly as follows. A bill setting out the proposed legislation is introduced by means of a first reading, usually in the House of Commons but sometimes in the House of Lords. This is a formality and takes place without debate. The result is an order to print the bill and to read it a second time. The second reading allows the promoters of the bill, usually the government, to explain the need for the bill and provides members of parliament with the opportunity to interrogate the detail of the proposed measure. The debate ends with a 'division' (vote) on whether the bill should be read a second time. If carried, this results in the bill passing to a committee stage, when a small group of MPs nominated by their individual parties discusses the proposed measure line by line.

Amendments are proposed and voted on or agreed by the committee. The results of the process are reported back to the House, allowing all members to comment on the bill and to propose amendments on which votes may take place. A third reading debate takes place immediately after the report stage, although no further amendments can be made at this stage. The bill then moves to the other chamber, generally from the Commons to the Lords. The procedure in the Lords replicates that in the Commons, with only minor differences, and at the end of the process, the bill is returned to the chamber where it was first introduced and a process of negotiation between the two Houses ensues where each considers the other's amendments. Once this process (known as 'ping-pong') is completed and both Houses are content with the final result, the bill receives royal assent and becomes an act of parliament with full legal standing (UK Parliament 2021).

An analysis of each of the major stages of the parliamentary process in both Houses of Parliament was carried out using the methods described above in Chapter 4. The analysis dealt with second-reading debates, committee stages, report stages, third-reading debates and 'ping-pong'. Formal first

readings, programme and money motions, dealing with the timetabling of debates and finance, were not included.

The results of these analyses are given in full in Appendix 7. Included in the text is the full table (Table 6.1) for the second-reading debate on the Planning Bill 2008, which shows the attention given to each of 37 identified themes during the debate. These themes are essentially the main topics raised by contributors to the debate: some contributors raised more than one topic, others dealt with a single topic; some topics were raised by many members, others by only one. All themes have been included in the analysis, with no attempt to disregard those that might appear to be unrelated to the overall purpose of the debate. The subsequent tables are shortened to show the results for the three neoliberal indicators, together with the first five results for each element of the legislative process. The full tables are given in Appendix 7.

The PA 2008 began life as a bill brought to the House of Commons on 27th November 2007 by Hazel Blears, Secretary of State for Communities and Local Government, and the Planning Bill received royal assent on 26th November 2008. The Bill was one of the first to be subjected to an amended committee-stage process following changes made in 2007 (Maer 2009) that gave parliamentary scrutiny committees – the bodies charged with conducting the committee stages of parliamentary bills – the opportunity to call witnesses to give evidence in person, in addition to receiving written evidence.

6.2 House of Commons Second Reading Debate

The basis for this analysis of the Act was the House of Commons second-reading debate. The debates, hearings and discussions at all stages of the Bill's legislative progress are given verbatim in Hansard, the formal parliamentary record. It is this record that has been analysed in the present work, the methodology for which has been described above. The second-reading debate took place on 10th December 2007 (Hansard 2007).

The Speaker selected for debate an amendment in the name of the leader of the opposition:

‘that this House declines to give a Second Reading to the Planning Bill because, whilst there is a need to speed up the planning system and undo the extra bureaucracy introduced in the 2004 Act, the Bill creates a new Infrastructure Planning Commission (IPC) which is fundamentally undemocratic and unaccountable to both local and national elected representatives, deprives Parliament of the ability to approve, amend or reject National Planning Statements (NPSs) and fails to guarantee that all revenues from the Community Infrastructure Levy (CIL) will be fully retained by local authorities; and because the combination of the IPC, the Homes and Communities Agency and more powerful regional development agencies represents the systematic dismantling of local democracy to the detriment of the local environment and local accountability.’ (Hansard 2007: Vol.469, Cols.38-39)

The amendment highlights ‘reduced democratic accountability’, one of the neoliberal indicators identified above in the literature review, although the other two indicators (centralisation and decentralisation, and business empathy and orientation) are not referenced directly in the motion debated.

In this analysis the debate was read in detail and the key themes set out by the secretary of state in presenting and supporting the Bill were identified. These themes were each characterised by an identifying word or short phrase. The same process was followed for the themes presented in opposition to the Bill by the shadow minister, and for all of the speeches and interventions made by the other 46 members of parliament who contributed to the second-reading debate. The total number of references to each theme were recorded.

In all, 37 separate themes were identified in the debate. Of these, the most frequently raised was that of democratic accountability, with 37 references, followed by the IPC with 35, national policy statements with 30, consultation with 24, and CIL with 20. The full results are given in Table 6.1 below. The references have been further analysed on the basis of three categories: a

reference included in a speech; a question; and a response to a question. The details of this analysis are given in Table 6.2.

It is perhaps unsurprising that the main themes of the debate mapped the issues raised in the opposition amendment. Table 6.1 shows that the five most frequently occurring themes accounted for some 54% of the total of the theme references identified. The first four accounted for 46.6% of the total and this rose to 50.2% when the figure for references to the CIL (which is not being considered as part of this work) were removed from the calculation. These results indicate that the other 33 themes account for the remaining references. In Table 6.2 it is seen that seven themes were referenced only once in a speech, while there were twelve questions on single themes with corresponding answers, and five questions that received no response. Looking only at the content of speeches, it is seen that the first four themes accounted for 59 out of 117 contributions, again discounting the CIL.

The potential markers of neoliberalism identified in the literature review were reduced democratic accountability, centralisation and decentralisation, and business empathy and orientation. As previously noted, democratic accountability was referenced 37 times during this exercise, accounting for 15% of all recorded references, while the other two indicators were referenced only once each. It was apparent that concerns for democratic accountability were raised from all sides and was mentioned in terms by four contributors from across the political spectrum:

Mark Field (Conservative) said that

‘The Secretary of State will understand that many hon. Members have great sympathy with the Government’s objectives. However, we are concerned about the lack of democratic accountability and transparency.’
(Hansard 2007: Vol.469, Col.30)

Martin Horwood (Liberal Democrat), in an intervention during the contribution of Nick Rainsford (Labour), asked

‘Is the right hon. Gentleman not concerned by some of the unprecedented powers of the commission, including powers to “apply, modify or exclude”

provisions in primary legislation and to amend, repeal or revoke local Acts? The reason given in clause 105 is that that should happen when it is “expedient”. Does he not worry about that lack of democratic accountability?’ (Hansard 2007: Vol.469, Col.55)

Clive Betts (Labour) said

‘That apparent lack of democratic accountability undermines the rest of what the Government are trying to achieve through this process.’
(Hansard 2007: Vol.469, Col.74)

and Mark Prisk (Conservative) commented that

‘Although there are some good measures here, I am extremely concerned that they have been undermined by Ministers failing to strike the balance between democratic accountability and administrative efficiency.’
(Hansard 2007: Vol.469, Col.100)

In all, 17 references to democratic accountability were made in direct contributions to the debate. In addition, 11 questions were asked that raised specific issues on this topic and to which nine direct responses were made.

Centralisation was identified as a theme in only one contribution to the debate. John Selwyn Gummer (Conservative), a former minister, was forthright in his assertion that he was

‘... looking for sensible decisions that are taken centrally, whereby we, as Members of Parliament, take the decision in the House. I am a great believer in our taking decisions on all subjects and not going out to other people through referendums and the like. That is what we should do here. We should make decisions on the big issues, and people should know how we voted. We should stand up and say, “We are in favour of nuclear power”, or that we favour a new railway or whatever it is. That is what parliamentary democracy really means.’ (Hansard 2007: Vol.469, Col.60)

The issue was not seen as a theme in any other contribution to the second-reading debate, and this encomium of parliamentary democracy and leadership stood alone among all debates.

While the term 'neoliberalism' was not mentioned at all during the debate the contribution of one MP, Paul Truswell (Labour), referenced issues that could be construed as referring to the concept. He noted that:

'There is an increasing polarisation between engaging the community, maintaining sustainable communities and tackling major challenges such as climate change on the one hand, and the promotion of enterprise, employment and wealth on the other. I believe that the Bill gets the balance substantially wrong.' (Hansard 2007: Vol.469, Col.63)

These comments could be interpreted as a critique of a neoliberal approach to planning and, as such, constitute the only reference to this theme in the whole of the second-reading debate and, indeed, in the whole of the passage of the Planning Bill through parliament. Because there was no overt reference to neoliberalism, this contribution was coded as 'business empathy and orientation'.

6.3 House of Commons Committee Stage

The committee stage of the Planning Bill's progress through the House of Commons consisted of 18 sessions. The first four of these were constituted under new arrangements for parliamentary committee business, which allowed the interrogation of witnesses in person in addition to the submission of written material from interested parties. The remaining 14 sessions consisted of line-by-line perusal of the Bill and debate on the content of each clause, with amendments proposed by committee members voted on, withdrawn or accepted by the government.

An analysis of the committee sessions was carried out using the same themes as had been identified in the analysis of the second-reading debate. The Hansard reports were read through in order to determine whether this approach would accurately reflect the content of the sessions or if new and different topics had emerged. It was found that the hearings covered much the same topics as had been identified in the debate, albeit with slightly

Table 6.1 **House of Commons**
Second Reading Debate
Ranking of Themes

Theme	References	Ranking	% of Total
Democratic accountability	37	1	13.6
IPC	35	2	12.8
NPS	30	3	11.0
Consultation	24	4	8.8
CIL	22	5	8.1
Airports and airports NPS	12	6	4.4
Climate change / low carbon	9	7	3.3
Housing	8	8	2.9
Section 106 agreements	7	9	2.6
Parliamentary process	7	9	2.6
Permitted development	7	9	2.6
Wind power / renewables	7	9	2.6
Scotland and Wales	7	9	2.6
Environment	6	14	2.2
Nuclear	5	15	1.8
Sustainability	5	15	1.8
Need for reform	4	17	1.5
Efficiency	4	17	1.5
NSIPs	4	17	1.5
Private and hybrid Bills	4	17	1.5
Single Consent	4	17	1.5
Funding for participants	3	22	1.1
TPOs	3	22	1.1
Conservation	3	22	1.1.
Ports	2	25	0.7
Participation	2	25	0.7
Green Belt	2	25	0.7
Motorways	1	28	0.4
Overhead lines	1	28	0.4
Landscape	1	28	0.4
PINS	1	28	0.4
Regional planning	1	28	0.4
Property rights	1	28	0.4
Criminal law	1	28	0.4
Private property	1	28	0.4
Centralisation	1	28	0.4
Business empathy and orientation	1	28	0.4

Table 6.2 **House of Commons**
Second Reading Debate
Origins of References

Theme	Speech	Question	Response	Total
Democratic accountability	17	11	9	37
IPC	16	11	8	35
NPS	14	8	8	30
Consultation	12	6	6	24
CIL	14	9	9	22
Airports and airports NPS	4	4	4	12
Climate change / low carbon	5	2	2	9
Housing	1	4	3	8
Section 106 agreements	5	1	1	7
Parliamentary process	1	3	3	7
Permitted development	5	1	1	7
Wind power / renewables	3	2	2	7
Scotland and Wales	1	3	3	7
Environment	6	0	0	6
Nuclear	1	2	2	5
Sustainability	3	1	1	5
Need for reform	2	1	1	4
Efficiency	2	1	1	4
NSIPs	2	1	1	4
Private and hybrid Bills	2	1	1	4
Single Consent	3	1	0	4
Funding for participants	1	1	1	3
TPOs	1	1	1	3
Conservation	1	1	1	3
Ports	0	1	1	2
Participation	2	0	0	2
Green Belt	0	1	1	2
Motorways	0	1	0	1
Overhead lines	0	1	0	1
Landscape	0	1	0	1
PINS	1	0	0	1
Regional planning	1	0	0	1
Property rights	1	0	0	1
Criminal law	1	0	0	1
Private property	1	0	0	1
Centralisation	1	0	0	1
Business Empathy and orientation	1	0	0	1

differing emphases. The same methodology was employed, with the Hansard records being transferred to a digital platform to enable the counting of particular words within a passage of text.

The analysis of the committee stage was carried out using the 37 'themes' previously identified, and the results are given in Tables 6.3, 6.4 and 6.5 for oral hearings of witnesses, normal committee 'business' sessions, and written evidence. The full tables are given in Appendix 7.

Although analysis tables for both written and oral submissions are included for completeness, the value of oral and written evidence in assessing the concerns of the legislators is questionable. Calls for the submission of written evidence to parliamentary committees are general and any individual or organisation may submit materials that supports their own particular views, however partial these may be. Oral evidence is given by parties specifically invited by the committee, and the evidence provided would be assumed to support the stance of the invitee. The process would be led and controlled by the members of parliament sitting in committee, with witnesses' evidence subject to cross-examination. Overall, a comprehensive range of possible views might be represented by these organisations, but this would depend on the criteria used in the selection of witnesses. These criteria are not obvious and transparent and cannot be seen to ensure that a full and balanced range of views is presented to the committee. Presumably the skill, experience and common sense of the committee's members are relied upon to ensure that its deliberations find the correct balance.

While each element of the committee-stage process produces information from different sources and in different way, it is possible to provide some measure of aggregation in order to compare the levels of concern about the various elements of the Bill and to compare these with the concerns expressed at the second-reading stage. These comparisons carry no numerical validity because there is no common basis for comparison between the sources. They do, however, provide an indicative assessment of the degree of importance and concern assigned to each of the themes by the legislators, it not being unreasonable to assume that the most-mentioned

**Table 6.3 House of Commons
Committee Stage Oral Hearings
Ranking of Themes**

Theme	References	Ranking	% of Total
IPC	168	1	13.3
NPS	151	2	12.0
Consultation	105	3	8.3
CIL	82	4	6.5
NSIPs	66	5	5.2
Democratic accountability	28	17	2.2
Centralisation	1	29	0.1
Business empathy and orientation	0	33	0

**Table 6.4 House of Commons
Committee Stage Business Sessions
Ranking of Themes**

Theme	References	Ranking	% of Total
NPS	473	1	15.1
IPC	451	2	14.4
Consultation	422	3	13.5
CIL	226	4	7.2
Scotland /Wales	186	5	5.9
Democratic accountability	112	7	3.6
Centralisation	3	33	0.1
Business empathy and orientation	0	36	0

**Table 6.5 House of Commons
Committee Stage Written Submissions
Ranking of Themes**

Theme	References	Ranking	% of Total
CIL	218	1	15.1
NPS	151	2	10.4
IPC	134	3	9.3
Environment	112	4	7.7
Housing	99	5	6.8
Democratic accountability	48	10	3.3
Centralisation	6	24	0.4
Business empathy and orientation	0	34	0

topics were those of concern to the greatest number of contributors to the debate. The analysis does not seek to make any assessment of the relative importance of the topics, since this could only be a subjective judgement. It merely reports the concerns made apparent by the legislators.

Only six themes appeared in every element of the committee-stage process: the IPC, NPSs, CIL, NSIPs, Consultation, and Housing, these accounting for 50 percent or more of the theme references in each type of committee session. Apart from CIL (not considered as part of this work, as previously noted), the main themes apparent at the committee stage of the Bill were the IPC and NPSs, both of which were in the top three themes in all elements of the committee stage. Consultation was fourth in both oral hearings and business sessions, but was ninth in written evidence.

While the second-reading debate was much concerned with democratic accountability, more than was the case for the IPC and NPSs, this preoccupation did not extend to the committee stage, where this theme was ranked 17th in the oral hearings, 7th in the business sessions and 10th in written evidence. The theme of centralisation was ranked 29th, 33rd and 24th respectively, with a maximum of 0.5% of theme references, while issues relating to business empathy and orientation were not mentioned at any stage of the House of Commons committee process. Similarly, and as noted previously, the terms 'neoliberal' or 'neoliberalism' did not appear anywhere in the written committee record.

6.4 House of Commons Report Stage and Third Reading Debate

The report stage of the parliamentary procedure allows the whole House to debate, and to adopt if it sees fit, the amendments to the bill proposed during the committee stage. It also allows the government to make other changes to the measure it considers expedient prior to a debate on its third reading. In the case of the Planning Bill 2008, a considerable amount of change to the original measure was proposed – 28 new clauses, six new schedules

and 218 amendments – in Programme Motion No.2 debated on 2nd June 2008. This motion rolled the report stage and third-reading debate into two day’s business for that and the following day. In the event, the second day’s business was held on 25th June following a change under Programme Motion No.3.

Analysis of these stages was carried out using the same procedures as previously and the results are presented in Tables 6.6 and 6.7 below.

The results for these stages are comparable with those from the second reading and the committee stages, with the IPC, Scotland /Wales, NPSs, consultation and democratic accountability producing 57% of the references in the report stage, while the IPC, NPSs, democratic accountability, consultation and NSIPs were the five most-referenced themes in the third-reading debate, accounting for more than 60% of those references.

The references to themes identified with neoliberalism followed a similar pattern, albeit with a return to some emphasis on democratic accountability. This ranked fifth, with almost 8% of references at the report stage and nearly 10% in third place in the third-reading debate. The low number of references to centralisation and business empathy and orientation continued, with the former registering 0.5% in 25th place and 0.4% in 27th place in the two stages, while the latter was not mentioned at the report stage and registered 0.6%, putting it in joint 22nd place in the third-reading debate.

Table 6.6 **House of Commons**
Report Stage
Ranking of Themes

Theme	References	Ranking	% of Total
IPC	196	1	15.3
Scotland /Wales	154	2	12.0
NPS	143	3	11.2
Consultation	125	4	9.8
Democratic accountability	97	5	7.6
Centralisation	6	25	0.5
Business empathy and orientation	0	33	0

Table 6.7 **House of Commons
Third Reading Debate
Ranking of Themes**

Theme	References	Ranking		% of Total
IPC	198	1		17.5
NPS	192	2		16.9
Democratic accountability	110	3		9.7
Consultation	102	4		9.0
NSIPs	74	5		6.5
Business empathy and orientation	6	22		0.5
Planning efficiency	6	22		0.5

6.5 House of Lords

The process by which parliamentary bills are scrutinised by the House of Lords generally replicates that followed in the House of Commons: a second-reading debate is followed by a committee stage, a report stage and a third reading of the bill. The Lords process differs in that the committee stage is dealt with by the whole of the upper chamber, constituted as a committee by a House resolution. This allows only for scrutiny of the bill itself and does not include the hearing of witnesses or the examination of written submissions.

An analysis of the Hansard reports on the second-reading debate and committee stage of the Planning Bill 2008 in the House of Lords was carried out using the same methodology as was used for the examination of the House of Commons committee stage. The Hansard record indicated that the issues raised and discussed in the Lords processes were generally the same as those identified as themes in the House of Commons debate, albeit that a different range of emphases were apparent. Again, the themes identified from the second-reading debate in the Commons were used as the template. The results are given below in Tables 6.8, 6.9, 6.10 and 6.11: these have been shortened to show the five most frequently occurring themes in each

category, in addition to the themes seen as indicative of neoliberal attributes. The full tables are shown in Appendix 7.

As before, two of the characteristics of neoliberalism previously identified barely featured in either of these stages of the legislative process, with one mention only of centralisation in both the second-reading debate and at the committee stage, and no mention in either of business empathy and orientation. As in the House of Commons processes, the term neoliberal or neoliberalism was not mentioned anywhere. Democratic accountability received more attention, being ranked third in the second-reading debate with almost 10% of theme references but only 11th, with under 3% of theme references at the committee stage. Tables 6.9 and 6.10 below illustrate that the concerns apparent in the earlier stages of the legislative process in the House of Lords are maintained through the report and third-reading stages, with NPSs, the IPC and housing common among the top five subjects.

The purpose of this analysis is not to determine the order of importance ascribed by the legislators to the themes that they introduced into their debates and hearings, but to demonstrate the degree of attention they accorded in their deliberations to the indicators of neoliberalism identified in this work: centralisation and decentralisation, business empathy and orientation, and democratic accountability. The first two indicators received little or no attention in this forum, while the third, democratic accountability, featured strongly during the second-reading debate but not in the other elements of the process, registering a maximum of slightly over 3% of the thematic references identified at each of the legislative stages.

The legislative process was completed after a process known as 'ping-pong', where the amendments made to a bill by the House of Lords are discussed by the House of Commons and accepted, rejected or amended by the lower chamber. Essentially a further report stage, this process can involve much discussion between the authorities in each House before the eventual acquiescence of the upper chamber. For the sake of completeness, this stage, which immediately proceeds the granting of royal assent, has also been analysed and the results are given in Table 6.12.

The most frequently referenced themes were again among those most often identified in the previous stages of the analysis, with perhaps a greater emphasis on 'green' issues such as climate change and the low-carbon economy, sustainability and the environment. Democratic accountability appeared fifth in the ranking, with 7.3% of theme references, and centralisation 17th, with 1.2% of theme references. Business empathy and orientation was not mentioned during the process.

Table 6.8 **House of Lords**
Second Reading Debate
Ranking of Themes

Theme	References	Ranking	% of Total
IPC	133	1	15.5
CIL	80	2	9.3
Democratic accountability	76	3	8.9
Climate change / low carbon	74	4	8.6
Sustainability	51	5	6.0
Centralisation	1	29	0.1
Business empathy and orientation	0	33	0

Table 6.9 **House of Lords**
Committee Stage
Ranking of Themes

Theme	References	Ranking	% of Total
NPS	317	1	22.2
Consultation	210	2	14.7
CIL	158	3	11.1
Sustainability	108	4	7.6
IPC	106	5	7.4
Democratic accountability	33	11	2.3
Centralisation	1	28	0.1
Business empathy and orientation	0	31	0

Table 6.10 **House of Lords**
Report Stage
Ranking of Themes

Theme	References	Ranking	% of Total
CIL	376	1	24.2
IPC	179	2	11.5
NPS	159	3	10.2
Housing	147	4	9.5
Consultation	136	5	8.7
Democratic accountability	37	11	2.4
Centralisation	7	21	0.5
Business empathy and orientation	0	31	0

Table 6.11 **House of Lords**
Third Reading
Ranking of Themes

Theme	References	Ranking	% of Total
CIL	104	1	29.7
NPS	41	2	11.7
Housing	34	3	9.7
IPC	27	4	7.7
Scotland, Wales	23	5	6.6
Democratic accountability	3	14	0.9
Centralisation	0	24	0
Business empathy and orientation	0	24	0

Table 6.12 **House of Commons / House of Lords**
'Ping-pong'
Ranking of Themes

Theme	References	Ranking	% of Total
Housing	51	1	18.0
CIL	38	2	13.4
Climate change / low carbon	37	4	13.1
IPC	20	3	7.1
Democratic accountability	18	5	6.4
Centralisation	3	17	1.1
Business empathy and orientation	0	26	0

6.6 Summary

The purpose of this analysis of the passage of the Planning Bill through the legislative process was to determine what emphasis, if any, was placed on the themes previously identified as indicators of neoliberalism. The analysis was intended to be indicative only, with no intention of attempting to draw definitive quantitative conclusions from the exercise. Obviously, the inputs into the various elements of the legislative process were very different in nature, ranging from parliamentary debates through committee hearings of oral evidence to a line-by-line examination of the wording of the Bill. It was not possible to determine the appropriate weight to be placed on each part of this process in order to legitimatise such an analysis, and such an attempt was not considered likely to be successful or, in fact, necessary. The results of the examination of each stage of the process were expressed in terms of the percentage of the total number of references in that stage to the themes identified in the House of Commons second-reading debate. Each of these results stands on its own since it is not mathematically possible to combine or 'average' averages. The results, therefore, are accurate but are indicative only.

Table 6.13 below brings together all the results for the themes considered to be indicators of neoliberalism. The analysis shows that consideration of business empathy and orientation featured only to a very small extent in the passage of the Bill, the only references occurring in the second and third-reading debates in the House of Commons. Centralisation received marginally more attention, featuring at every stage apart from the third reading in the House of Lords, albeit receiving a maximum of 1.2% of theme references during the 'ping-pong' process. Democratic accountability, however, received a substantial level of attention at all stages of the process, especially during the second and third-reading debates in the House of Commons and the second-reading debate in the House of Lords. As previously noted, the terms 'neoliberal' or 'neoliberalism' are not recorded as having been used anywhere in the course of the legislative process that created the Planning Act 2008. This, together with the minimal attention

Table 6.13 The Occurrence by Parliamentary Stage of Neoliberal Indicators and Other Themes in the Parliamentary Passage of the Planning Act 2008 given as a percentage of all theme occurrences identified in that stage

Theme →						
Bill Stage ↓	IPC	NSIP	NPS	Democratic Accountability	Centralisation	Business empathy and orientation
House of Commons						
Second reading	12.8	1.5	11.0	13.6	0.4	0.4
Committee hearings	13.3	5.2	12.0	2.2	0.1	0
Committee	14.4	4.1	15.1	3.6	0.1	0
Committee written submissions	9.3	6.7	10.4	3.3	0.4	0
Report	11.2	2.0	15.3	7.6	0.5	0.5
Third reading	17.5	6.5	16.9	9.7	0.5	0.5
House of Lords						
Second reading	15.5	5.0	4.2	8.9	0.1	0
Committee	7.4	1.5	22.2	2.3	0.1	0
Report	11.5	2.8	10.2	2.4	0.5	0
Third reading	7.7	1.1	11.7	0.9	0	0
'Ping-pong'	7.1	1.1	2.1	6.4	1.1	0

given to two of the indicators of neoliberal tendencies, make it unlikely that the Planning Bill was seen as an overtly neoliberal measure by the legislators. Whether the centralising and business-orientated tendencies of the PA 2008 are sufficient to allow it fairly to be characterised as neoliberal on those grounds alone will be examined in detail later. It is sufficient to say at this stage that on the basis of the analysis described above, it is not

obvious that the object of the legislators was to produce a neoliberal measure.

The third indicator, democratic accountability, provided a constant theme during the passage of the legislation, with two specific concerns being raised: the use of a body outside of direct parliamentary control to make decisions on applications for planning consents for major infrastructure projects; and the need for parliament to be in control of the content of the NPSs that would provide a framework within which the IPC would make decisions on NSIPs. The PA 2008 established the IPC outside the direct control of parliament, although its existence was cut short by changes brought about by the Localism Act 2011. This act also included measures that would give parliament, through the select committee system, the opportunity to exercise democratic control over the content of NPSs. It is this aspect of the 2011 act that will be examined in some detail below to determine whether, in fact, parliament stuck to its intention of retaining control of the planning process for major infrastructure schemes and so prevented the planning process established by the Act from being legitimately criticised, on these grounds at least, as representing a neoliberal advance.

6.7 The Localism Act

The Conservative and Liberal Democrat coalition government that resulted from the 2010 general election promoted a policy of 'localism' with regard to local government, non-domestic rates, community empowerment, housing and various planning functions. The Localism Act 2011 put into effect a range of measures that were part of this policy agenda together with changes to the PA 2008. These changes were in line with the objections made to the Act by opposition speakers and some government supporters during the parliamentary debates in 2008 that led to its enactment. Included in Part 6, Chapter 6 of the 2011 act were provisions to abolish the IPC (S128) established by the PA 2008 and to transfer many of its powers and duties to the relevant secretary of state. Also included (S130) were

measures to strengthen the control of parliament over the designation of NPSs, and a number of smaller measures setting out transitional arrangements and making detailed changes to the consenting process under the 2008 Act. This chapter accounted for only 15 of the Localism Act's 241 sections.

The Localism Act followed the standard bill procedure detailed above in respect of the PA 2008. Contributors to the House of Commons second-reading debate made only three references to the abolition of the IPC, with no contributions from frontbench spokesmen or women. All three contributors welcomed the proposed change:

Clive Betts (Labour) said:

'I welcome the transfer of powers from the Infrastructure Planning Commission so that it will be elected politicians who eventually sign off decisions on major infrastructure projects. I argued for that when I was on the Government Benches in a previous Parliament.' (Hansard Vol.521, Col.577)

Simon Hughes (Liberal Democrat) concurred:

'I also welcome the abolition of the Infrastructure Planning Commission and the return to a planning system whereby the ultimate decision will be taken by a Minister accountable to Parliament.' (Hansard Vol.521, Col.581)

Jonathan Edwards (Plaid Cymru) also agreed:

'We welcome the abolition of the Infrastructure Planning Commission, whose introduction in the Planning Act 2008 we opposed as undemocratic as it transferred out responsibilities and scrutiny that belonged with the Secretary of Parliamentary State.' (Hansard Vol.521, Col.596)

Discussion and debate about the changes to the PA 2008 consenting scheme occupied less than an hour during the Commons committee stage of the Bill, with no amendments being put to a vote and only one minor drafting change made by the government and accepted by the committee.

The report stage contained only two references to the IPC, one in a speech by the secretary of state in introducing a government amendment in which he asserted that the act:

'... strengthens the requirements for pre-application scrutiny, introduces neighbourhood planning, abolishes the Infrastructure Planning Commission and returns powers ultimately to Ministers through a major infrastructure planning unit.' (Hansard Vol.528: Col.261)

the other in a further reference from Simon Hughes, who again welcomed the demise of the IPC:

'I welcome the abolition of the Infrastructure Planning Commission, and the fact that the arrangements will be taken back into a democratically accountable planning system.' (Hansard Vol.528, Col.286)

NPSs were not mentioned during the House of Commons report stage, while there were no mentions of either the IPC or of NPSs during the bill's third reading in the Commons.

A similar picture appeared during the passage of the Localism Bill through the House of Lords, with the abolition of the IPC not being the subject to a vote at any stage of the proceedings. There were some expressions of regret at the reintroduction of politicians to the detailed decision-making stage of the process, with its potential for delay. The words of Lord Cameron of Dillington, a crossbench peer, during the second-reading debate were typical of this view:

'Starting at the top, I was dismayed but not surprised to see the abolition of the IPC, which is only 12 months old. We will now no longer have the democratic will of Parliament being implemented by a time-limited and precedent-conscious body, giving certainty and confidence to potential builders of and investors in our infrastructure. Here, again, such development will be controlled by the uncertain, personal whim of whatever Secretary of State is in power at the time. That is a retrograde

step in my view and, in terms of getting long-term investment into our infrastructure, a bad idea.’ (Hansard Vol.728, Col.186)

The contrary view was typified by Lord Jenkin of Roding, a Conservative peer, during the same debate:

‘I am in no doubt whatever-and when we debated the Planning Bill I made these points-that it is far better for the decision on major infrastructure projects to be taken by a Minister, who is accountable to Parliament, than by an appointed quango.’ (Hansard Vol.728, Col.191)

Many of the references to the IPC during the House of Lords stages of the Localism Bill were about the continuity being afforded to the IPC processes established by PA 2008 that were to be retained under the provisions of the Localism Act. At the report stage, Lord Jenkin of Roding (Conservative) suggested that

‘The amendments that I moved were concerned primarily with ensuring a seamless transition from the existing IPC procedure to the NSIP procedure.’ (Hansard Vol.731, Col.103)

while Lord Berkeley (Labour) was concerned with the modalities of the new arrangements when he assured the House that

‘This is something that has come up quite recently, when we have tried to see how the IPC and the Planning Act 2008 should be applied to railway projects.’ (Hansard Vol.731, Col.111)

The debates in parliament during the passage of the Localism Act 2011 indicated that there was no real opposition to the changes made to the consenting procedures for significant national infrastructure established under the PA 2008. Table 6.14 below shows the occurrence of the main themes associated with the consenting process and the ‘neoliberal indicators’ during the various stages of the Localism Bill’s parliamentary passage. The figures relate to the whole of the second-reading debates, where general principles are set out, and those parts of the remainder of the

process that dealt solely with the sections of the legislation concerned with NSIPs.

**Table 6.14 House of Commons and House of Lords
Localism Bill Occurrence of Themes**

Theme →						
Bill Stage ↓	IPC	NSIP	NPS	Democratic Accountability	Centralisation	Business empathy and orientation
House of Commons						
Second reading	1	2	1	0	9	0
Committee hearings	9	10	2	1	0	3
Committee	19	2	4	10	0	1
Report	2	0	0	0	0	0
Third reading	0	1	0	0	1	0
House of Lords						
Second reading	6	3	6	1	0	1
Committee	16	13	55	5	8	0
Report	29	12	11	1	0	0
Third reading	6	1	0	0	0	0
Ping-pong						
	0	0	0	0	0	0

6.8 Secondary Legislation

The pattern of UK legislation has developed over time to accommodate the complexity of the measures needed to control and administer modern society and enterprise. It is now often found more convenient to include the detail of government requirements in secondary legislation driven by primary legislation that is essentially enabling in nature. It would be possible to specify measures supporting neoliberal indicators in secondary legislation, and so the legislation was examined to determine whether this had, in fact, been done.

While the PA 2008 contains a considerable amount of detail on the face of the statute, much detailed material is included in secondary legislation in the form of the NPSs and in the statutory instruments that set out how the process of assessing applications for development consent orders is to be operated. The details of what material may be referenced in the NPSs are set out Part 2 Section 5 of the Act and these include, among others, the types of appropriate development, the criteria for deciding on suitable locations for developments, the weight to be given to specified criteria, mitigation measures, and the design criteria to be used. The section also requires the reasons for the policy defined in the NPS to be set out, and how this takes account of wider government policy with regard to climate change.

In all, 12 NPSs have been designated by parliament with a 13th currently in draft form: Table 6.15 Appendix 7 demonstrates that each of the NPSs addresses the issues defined in the primary legislation. Although the form of the NPSs varies, each contains sections dealing with government policy, with the perceived need for infrastructure development in the particular area of concern, with the principles to be followed in the assessment of the merits of the particular application, and with the generic impacts that should be considered. The only NPS varying substantially from this format is that for nuclear power, which deals with site-specific and radiological issues. The format of each NPS is generally similar, albeit that they have been produced by a variety of government departments. Table 6.16 Appendix 7 indicates that each uses the same general palette of assessment principles, with additions specific to its own topic, and assesses a very similar range of generic impacts. Neither the assessment principles nor the generic impacts set out in the NPSs relate in any way to the neoliberal indicators identified earlier: centralisation and decentralisation, and democratic accountability. Similarly, business empathy and orientation is not identified in either the assessment principles or the generic impacts. However, there is a sufficient number of references in the NPSs to business and related topics to warrant a fuller investigation into the place of business empathy and orientation in their operation.

Examination of the text of the NPSs shows an intention by the government to support business through the operation of the planning system. There are nine references to business in the overarching energy NPS EN-1, but only at paragraph 2.2.10 is there evidence of a specific intention to provide business support:

'... the Government is committed to ensuring that adaptation needs are built into planning and risk management now to ensure the continued and improved success of businesses and new energy NSIPs.' (DECC 2011a)

EN-1 specifically sets out the lack of an openly directive intent on the part of the government. At paragraph 3.3.24 it is noted that

'It is not the Government's intention ... to set targets or limits on any new generating infrastructure to be consented in accordance with the energy NPSs. It is not the IPC's role to deliver specific amounts of generating capacity for each technology type. The Government has other mechanisms to influence the current delivery of a secure, low carbon, affordable electricity mix.' (DECC 2011a)

Paragraph 3.8.20 notes that:

'Decisions on gas supply infrastructure are initially a commercial matter for gas market participants (and subject to regulatory requirements). ...The nature of that capacity (as between indigenous production, imports and storage) and the technical specification of gas storage capacity that might be proposed (for example the "range" of a proposed storage facility), are all commercial matters.' (DECC 2011a)

The ports NPS, at paragraph 3.3.1, states that

'In summary, the Government seeks to ... allow judgments about when and where new developments might be proposed to be made on the basis of commercial factors by the port industry or port developers operating within a free market environment.' (Department for Transport 2012)

and at paragraph 3.4.9

'However, the extent, and speed, with which these developments proceed in reality will depend upon the commercial judgements of the developers at the time.' (Ibid)

The waste water NPS makes no reference to business or commercial interests other than in the context of business plans, or in generalised terms also encompassing households, communities, the public and the third (voluntary or charity) sector, while 'commercial' appears only in the context of processes that produce effluent. The hazardous waste NPS makes very few references to business or commercial matters apart from at paragraph 3.3.1, where it notes that

'... the UK is promoting responsibility deals with retailers and other key business sectors to help drive forward waste prevention policies and practices.' (DEFRA 2012)

The networks NPS references business and commerce briefly in the context of travel and the cost to business and others of traffic delays. The airports NPS contains only 25 direct references to business in the more than 14,000 words of its first three chapters of introduction, the need for the increased capacity, and the preferred scheme: the remaining chapters dealing with assessment principles and the assessment of impacts. Almost all these references are in the context of the perceived benefits to business interests to be delivered by the development of airports. Business and commercial issues do not feature in the geological disposal NPS, while the draft water resources infrastructure NPS makes just one reference to business plans and two to household and business water consumption in more than 11,000 words. None of the NPSs makes either specific or generalised reference to centralisation or to democratic accountability other than in the airports NPS, where, at paragraph 1.26, it is noted that after an exit from the European Union

'It will then be for democratically elected representatives in the UK to decide on any changes to [UK domestic] law, after full scrutiny and proper debate.' (Department for Transport 2018)

A further part of the legislative documentation consists of statutory instruments (SIs), which are a form of secondary legislation made by parliament under powers defined in primary legislation by parliament itself. The PA 2008 as amended contains references to 74 SIs and details of these are given in Appendix 8. They cover a number of different functions: some define the commencement arrangements for the various changes brought about by the Act; others indicate the changes to be made to the Act as a result of later legislation; and others enshrine in the parliamentary record the Development Consent Orders arising from the various planning applications determined under the Act. A reading of these documents reveals no overt references to the neoliberal indicators: it does, however, show how the Act has expanded its reach in terms of additional types and scales of infrastructure schemes brought within its coverage, and the impact of other legislation, primarily the Localism Act 2011, on the PA 2008.

A further 43 SIs are concerned with the operation of the various processes established by the Act, and these are listed in Appendix 9. These deal with the modalities of such things as application forms and procedures, the examination process, compulsory acquisition, fees and decisions.

This legislation deals purely with the establishment and enablement of a fully defined consenting process. It says nothing specifically or by implication about centralisation, business or democratic accountability.

Reviewing the secondary legislation supporting the PA 2008 shows that there is no attempt within it to promote the indicators of a neoliberal agenda through this medium. It does, however, reinforce in more direct terms the support for a market-led approach to the provision of major infrastructure projects. This is not specifically set out in the Act itself but is enabled by that legislation.

6.9 Conclusions

The analysis of the parliamentary process has been based on the identification in the debates, committee sessions and hearings, of references

to the three neoliberal traits seen in the literature review as being markers of neoliberal tendencies: reduced democratic control; centralisation and decentralisation; and business empathy and orientation. Of these, the latter two were of little concern to the parliamentarians who contributed to the legislative process. The issue of democratic control was the issue raised most often in the parliamentary process, with concerns expressed on all sides of the debate about the need for parliament to keep full control of the process and maintain accountability for the outcome of the new legislation. The objection that the introduction of the IPC reduced this control to unacceptable levels was removed by the Localism Act 2011 which abolished the IPC and transferred the decision-taker role to a government minister answerable to parliament.

The lack of the overt signs of neoliberalism in the legislative process cannot be said to provide a necessary and sufficient proof that the Act does not promote this approach. The analysis of the parliamentary debates leading to the passing of the Act runs into the usual problems of attempting to prove a negative proposition: it does not prove that the Act is not neoliberal, and so does not eliminate the possibility that it can justifiably be characterised as such. It could be thought that the PA 2008 must be a neoliberal measure since it was legislated in neoliberal times. This seemingly simplistic view bears further examination. Politically and economically, the PA 2008 was enacted after the demise of Conservative governments under Thatcher and Major, during the time of the Blair and Brown 'New Labour' administrations. Their approach was, simply put, that market forces should be allowed primacy in the economic life of the country and that what mattered was not political dogma but 'what worked'. The proposed Act was generally seen by parliamentarians as a common-sense approach to what had become defined by many parties with influence over government policy as a problem of inordinate and unwarranted delays to the granting of planning consent for major infrastructure projects. The normative position of the need for business interests to be supported and the acceptance of the primacy of national interest over almost all local concerns is illustrated by the minimal attention given to these issues during the parliamentary process. What constituted the

social and political mores that allowed these aspects of the legislation almost entirely to escape comment and debate during enactment is a deeper question which has been noted in Section 1.4 and will be the subject of further discussion in a later chapter, drawing on the suggestions of Gramsci (1971) and Zanutto (2020) as to how these matters may have become normalised in current political discourse.

If proof of neoliberal intent in the Act is to be found, it is best sought in an attempted analysis of the impact on the indicators of neoliberalism already identified in earlier chapters. The next chapters will look at how each of these indicators have manifested themselves in the consenting regime for nationally significant infrastructure projects.

Chapter 7 Democratic Accountability

7.1 Introduction

Democratic accountability was identified in Chapters 1 Section 4 and Chapter 3 Section 5 as an indicator of neoliberalism. Chapter 6 showed that this was the most prominent of the neoliberal indicators identified in the debates and committee processes of the passage through parliament of the Planning Act 2008 (PA 2008, the Act). This chapter looks at the way in which the legislators addressed the matter of democratic accountability, ensuring that National Policy Statements (NPSs) would be subject to parliamentary scrutiny rather than being purely government documents. It addresses the measures that parliament itself put in place to ensure that a review and amendment process could allow this oversight to be exercised. This concentration on secondary legislation perhaps indicated that the principle of the granting of consent to nationally significant infrastructure projects remaining directly under the control of a government minister answerable to parliament had already been conceded at this point, and that the establishment of the independent Infrastructure Planning Commission (IPC) was an accepted independent feature of the Bill at an early stage of its parliamentary progress. The question of democratic accountability at a local level was subsumed by that of national need and centralisation, and is addressed later in Chapter 8.

Much of the discussion during the enactment of the Planning Bill related to the way in which NPSs should be formulated and controlled by parliament, with one major strand of concern being the powers of the relevant secretary of state to designate these documents. In the House of Commons second-reading debate, considerable time was given to the question of whether the secretary of state could designate as the airports NPS an existing document that presupposed the construction of a third runway at Heathrow. NPSs were established in the Act as secondary legislation and as such would have been laid before parliament in a process that did not allow the documents to be

amended. Much effort was devoted during the parliamentary process to ensure that the Act would result in NPSs being fully reviewed and subject to amendment by members of both Houses, so that the documents would be a product of the legislature rather than the executive arm of government.

These requirements were included in the PA 2008 at sections 5 (4):

'... the Secretary of State may only designate an NPS if the consultation and publicity requirements set out in Section 7 have been met; and 6 (7): the Secretary of State may amend an NPS only if the same Section 7 requirements have been met.'

The parliamentary requirements were set out in Section 9, with the secretary of state required to place before parliament proposals for an NPS, or an amendment to an NPS, that specified a time within which either House might pass a resolution with regard to the proposal, or a committee of either House make recommendations about it. The secretary of state must then lay before parliament a statement in response to the resolution or recommendations.

The Localism Act 2011 amended various parliamentary requirements for NPSs. Section 5 (4) set out in fuller detail what an NSP could contain, making the wording clearer and more closely defining the timescales for actions by the secretary of state. Changes to the review requirements in Section 6 allowed the secretary of state to determine whether changes to the proposed NPS were substantial enough to require a new publicity and consultation process, thus removing the possibility of non-material changes that might cause delays in the designation process. Changes to the parliamentary requirements in Section 9 reaffirmed that any changes made to the proposed NPS after a House resolution or a committee recommendation should again be laid before parliament. If this document proved to be something other than had previously been laid, or if agreed changes had not been made, then the proposal must again be subject to a process of publicity and consultation.

These measures appear to have been intended to block the possibility of the executive using procedural devices to prevent the legislature defining the content of an NPS to its own satisfaction. As previously noted, this

scepticism about the executive branch's intentions with regard to NPSs was apparent in the House of Commons second-reading debate, when concerns were expressed that the airports NPS would simply involve the designation of existing government policy documents without parliament being given the opportunity to examine and amend them. The matter appeared to have been taken to heart by both legislature and executive, as the Localism Bill 2011 contained the strengthened provisions noted above, which were passed unamended by parliament.

The mechanism was thus put in place for parliament to exercise its democratic responsibility to define the NPSs that provide the structure within which applications for development consent orders are to be judged. This chapter carries out an assessment of the way in which parliament has discharged the functions it had been so careful to reserve to itself. This enables a judgement to be made about the legislature's democratic accountability in this regard.

7.2 Parliamentary Process

NPSs are a form of secondary legislation resulting from the PA 2008 as amended by the Localism Act 2011. The procedure to which they are subject appears to be a development of the 'super-affirmative' procedure as described in Erskine May (2019:31.4), the handbook of parliamentary procedure. This gives both Houses opportunities to comment on proposals for secondary legislation and to recommend amendments before orders for affirmative approval are brought forward in their final form. It requires a proposal for a statutory instrument to be laid before parliament in the form of a draft of that instrument. A defined period of time is allowed for consideration of the draft, after which the relevant minister may lay it before both Houses for approval by affirmative resolution. In doing, so the minister is generally required to lay a statement summarising any representations made during the period for parliamentary consideration, and any changes that have been made to the draft instrument as a result of such representations. The provisions of the Act as amended mean that the

secretary of state must respond to a resolution of either House, or a recommendation of a committee of either House, and go through further consultation and publicity procedures if the original proposal is not amended as proposed.

A parliamentary briefing paper (HoC 2016) notes that about 80% of secondary legislation is placed before parliament under a negative procedure (coming into force unless there is an objection from the House), and 20% under an affirmative procedure (not coming into force unless there is specific approval from the House). This implies that the amount of secondary legislation subject to a super-affirmative procedure is vanishingly small. The use of the even more stringent measures established for the designation of NPSs indicates that parliament intended the highest level of scrutiny should be devoted to this task.

The reservations about NPSs voiced during the passage of the Act through parliament were one manifestation of concerns expressed more widely at the time about the delegation of parliamentary powers. The debates on the Planning Bill took place at a time when parliament had become concerned about the level of scrutiny it afforded to the legislation it was asked to pass. There was perceived to be a lack of proper scrutiny of the content of secondary legislation contained in statutory instruments made under the various provisions of primary legislation in acts of parliament. Statutory instruments were produced by the various secretaries of state to provide the means by which primary legislative measures were turned into workable administrative processes. This was seen as the delegation by parliament of its law-making powers to the government, with only a minimal exercise of its obligation to scrutinise new legislation.

The issue of delegation of powers had been considered by the House of Lords select committee on the constitution in its discussion during the 2005-06 parliamentary session. Members are drawn from among the legal and constitutional experts in the upper chamber, and the committee has a remit to examine the constitutional implications of all public bills, as well as investigate broader constitutional issues and, where appropriate, publish a

report of its findings. In its 11th report of the 2005-06 session, the committee dealt with the Legislative and Regulatory Reform Bill. In reviewing the delegation of law-making powers to ministers, it noted at paragraph 30 that

'The compromise that has been reached in the United Kingdom between effective legislative processes and parliamentary scrutiny is for Parliament to delegate some law-making powers to Ministers ... So for many years it has been commonplace for Acts of Parliament to delegate powers to Ministers to make legislation in the form of orders [statutory instruments] to make detailed rules governing statutory schemes. More than 3,400 orders were made in 2004 alone.' (HoL 2006:14)

Paragraph 31 of the report notes that

'Compared to the bill procedure, parliamentary procedures for scrutinising delegated legislation are less rigorous. The Joint Committee on Statutory Instruments considers whether a draft order needs to be drawn to the attention of Parliament as exceeding the limits of the authority delegated to the Minister. In this House [the House of Lords], since December 2003, the Committee on the Merits of Statutory Instruments considers whether the policy implications of a draft order are such that it ought to be drawn to the attention of the House. Debates on orders are now rare. In the House of Commons, such debates are normally conducted in a standing committee. Debating time is limited to 90 minutes. No amendments can be moved. It is also of note that the text of delegated legislation is normally drafted by departmental lawyers rather than Parliamentary Counsel [responsible for bills].' (Ibid:15)

From this it would appear that the use of powers delegated to others, be they independent commissioners or secretaries of state, had become something of a sensitive subject, and this was certainly borne out by the frequency with which such concerns were expressed during the progress through parliament of the Planning Bill.

7.3 National Policy Statements and Parliamentary Oversight

During the passage of the Bill through parliament, it was asserted in debate that it was for parliament to determine how it would manage the oversight of secondary legislation brought forward under the Planning Act. The minister of state, supporting the bill during the second-reading debate, noted that

'... we have recommended scrutiny of the national policy statements by a new Select Committee. It will hold an inquiry and report in parallel with public consultation. The Government will consider the Committee's report and revise national policy statements where appropriate.' (Hansard 2007:Cols.118-119)

There was comment on the need for those chairing the various select committees to be involved in the process, but the matter was not pursued in detail as this was an issue for parliament rather than the government to decide. In the third-reading debate, the secretary of state noted that

'I believe that we are going further than any other legislation of which I am aware by enabling that policy to be subject to debate and proper scrutiny, including Select Committee scrutiny, in a way that has never been possible in the past.' (Hansard 2008:Col.346)

In attempting to assess the lengths to which parliament went to ensure that it, rather than the government, retained control of the form and content of the NPSs, it is pertinent to review the changes made to the process of reviewing what was essentially a new type of secondary legislation.

Select committees of the House of Commons had been used as a means of examining particular areas of government policy and practice since the 19th century (HoC 2009). Although they had become an influential part of the mechanism of government, they were largely superseded during the early 20th century by the introduction of independent inquiries and royal commissions. Their ad hoc use, together with increasing dissatisfaction with what was seen by elected members as a growing imbalance of power

between parliament and the executive, led to the establishment by the 1979 Thatcher government of the modern system of select committees.

The liaison committee of the House of Commons had existed informally since 1967 as a forum for those chairing select committees. It gained a formal existence under the post-1979 dispensation following a recommendation by the procedure committee of 1976-78 (Hansard 1978) and after a debate on an amendable motion on the floor of the House of Commons (Hansard 1980) effected by Standing Order 145 (Ayelett 2015).

Since there was no parliamentary structure within which reviews of proposed NPSs could readily be carried out, there was discussion during the passage of the Bill about how this work could best be done. In terms of the themes used in the analysis of the bill process set out in Chapter 6 above, these discussions were recorded under 'parliamentary process', although other matters of procedure were also captured under this heading. In the third-reading debate on the Bill in the House of Commons, the government acknowledged the strength of feeling among members about the need for NPSs to be fully examined by the legislature and not to be merely government documents. The minister for local government suggested a mechanism to achieve this, while noting that it was a matter for the House to conclude:

'We propose that the Government would then consider what change was needed to the draft national policy statement in the light of the views expressed in this House and in the public consultation, and we would then revise the draft as appropriate and as necessary.' (Hansard 2008c)

Following the passing of the PA 2008, Parliamentary Standing Order 145 was amended in June 2009 to allow the setting up of a sub-committee of the liaison committee, to be called the national policy statements committee. The debate on these changes took place on 20th May 2009 and included an exposition by the Under-Secretary of State for Communities and Local Government on the way in which the method of scrutinising NPSs had become a matter for parliament to decide (Hansard 2009). The sub-committee consisted of those chairing the housing, communities and local

government, environment, food and rural affairs, transport and Welsh affairs committees and two other members of the liaison committee. Its role was to decide which committee should scrutinise each proposal for an NPS made by the government under the Act, and, if it saw fit, to consider matters relating to NPSs generally. The way in which the NPSs were to be examined was defined by a new parliamentary standing order, 152H, of 3rd June 2009 with minor textual emendation by the standing orders of 18th October 2009. Changes were made to the number of members who could constitute the sub-committee by the standing order amendments of 12th December 2009. Further minor changes defining the circumstances that might lead to the demise of the sub-committee were introduced on 21st March 2012, and changes on 11th October 2016 accommodated the renaming of various committees whose members could serve on the sub-committee. Time constraints on the consideration of proposed NPSs were removed, since these were now at the behest of the secretary of state under the terms of the Localism Act. This system operated without interruption until February 2017, when a meeting of the liaison sub-committee recommended that in future the relevant departmental select committee be automatically designated in respect of the proposed NPS, and this recommendation was adopted by the liaison committee. However, the process was not changed until the amendment to standing orders on 7th February 2017, and the first NPS to be examined by a select committee without prior reference and allocation by the liaison committee was the geological disposal infrastructure NPS in 2019. Again, minor changes to committee names were accommodated in the changes of 7th February 2017 and 7th March 2017.

Having looked at the considerable efforts taken by the legislature to ensure it could exercise control over the content of NPSs, it then remains to scrutinise the steps that were actually taken by parliament to discharge this function.

7.4 Designating National Policy Statements

Under the terms of the PA 2008, NPSs were to be produced for each of the categories defined by the Act as being projects of national significance.

Responsibility for this task lay with the individual secretaries of state, and no specific timescale was laid down for their production. The process was carried out over a number of years between 2009 and 2018, with the suite of energy NPSs the first to be designated.

Section 5 of the Act calls for a formal process of designation to be carried out for each NPS. The way in which the designation process was accomplished will be examined in detail for each of the NPSs to determine whether the degree of control that the legislature, during the passage through parliament of the Planning Bill, determined should be provided for this process had, in the event, been provided. The effectiveness of the processes developed by parliament for this purpose, and the diligence with which they were carried out, will provide an indication of the seriousness with which parliament pursued its aim of ensuring that democratic control of the PA 2008 innovations was maintained.

Table 7.1 NPS Designation: Start and Completion Dates

National Policy Statement	Start of Designation Process	Designation Date
Overarching energy (EN-1)	09.11.2009	19.07 2011
Fossil fuels (EN-2)	All energy NPSs were dealt with together during the consultation and approval process.	
Renewable energy (EN-3)		
Oil and gas supply and storage (EN-4)		
Electricity networks (EN-5)		
Nuclear power (EN-6)		
Ports	09.11.2009	26.01.2012
Waste water	16.11.2010	09.02.2012
Hazardous waste	14.07.2011	06.06.2013
National networks	04.12.2013	14.01.2015
Airports	02.02.2017	26.06.2018
Draft NPS for water resources	29.11.2018	
Geological disposal infrastructure	25.01.18	17.10.19

Table 7.1 shows the dates on which the process started for each of the NPSs, and on which dates designation took place.

The procedure used for the designation of NPSs changed with the amendments introduced by the Localism Act 2011. Illustrative examples of each procedure are given below and commentary on the designation of each NPS is given at Appendix 11.

7.4.1 Energy NPSs

The Planning Act received royal assent on 26th November 2008, and the Commons energy and climate change select committee considered the principle of NPSs at its meetings on 20th May 2009 and 16th June 2009, ahead of the publishing of the drafts of the suite of energy NPSs on 9th November 2009. These, together with the ports NPS, were the first draft NPSs to be produced. All six of the energy NPSs were dealt with together during the designation process.

Designated by the liaison committee to consider energy NPSs (HoC 2010a), the energy and climate change committee received 105 memoranda from a wide variety of organisations and individuals concerning the draft NPSs. These included one from the Department of Energy and Climate Change that set out the programme of consultations that had been carried out across England and Wales to publicise the advent of the NPSs. The committee held ten formal hearings of evidence from 57 witnesses, and a further three meetings to discuss their findings. These were presented in its report of 17th March 2010, which contained 30 recommendations for changes to the proposed energy NPSs and including a recommendation for a debate on the floor of the House:

'Given the importance of the Statements in delivering our energy and climate change objectives, we recommend that they be subject to a debate in the main Chamber on an amendable motion, offering the possibility of a vote.' (HoC 2010b).

In the House of Lords, six grand committee sessions were devoted to the energy NPSs, culminating in full debates on the floor of the chamber on 29th

March 2010 and 11th January 2011, when a revised overarching energy policy EN-1 was considered. As with many Lords debates, the motions considered were not taken to a vote, with government ministers undertaking to consider further the issues raised. Given the timing of the debate, there was ample opportunity for appropriate amendments to be made to the government's final proposals.

Following the publishing of further government proposals on 23rd June 2011, a House of Commons debate was held on 18th July 2011, and the motion to note and approve the NPSs was unopposed in the cases of EN-1, 2, 3, 4 and 5, while the motion to approve EN-6 – nuclear power generation – was approved by 267 votes to 14.

7.4.2 Airports NPS

While the airports NPS was one of the last NPSs to be produced, it had been foreshadowed by extensive concerns raised during debates in 2008 on the contents of the Planning Bill. Concern had been expressed by MPs from all parties about the possibility of planning consent being granted for the construction of a third runway at Heathrow on the basis of previously published proposals and without a properly approved process being followed. There was an unwillingness on the part of MPs to allow the government to designate as national policy measures that had been incorporated in Green Papers or other consultative documents in previous years. Paul Truswell (Pudsey, Labour) said

'The Department for Transport has already indicated that the air transport White Paper will form the basis of an NPS on airport developments – something I do not feel I could possibly support.' (Hansard 2007:Col.66)

John McDonnell (Hayes and Harlington, Labour) concurred:

'Any attempt to incorporate the aviation White Paper into a policy statement would be an abuse of power because it has not gone through the exhaustive process of consultation, dialogue and discussion that any policy statement would be expected to undergo, especially in my community.' (Hansard 2007:Col.89)

These objections were recognised in the wording of the Act in the requirements of Part 2 relating to NPSs. This was framed in such a way that an NPS could only be designated as such if it had been laid before parliament and had been the subject of defined publicity and consultation procedures, and parliament had been given the opportunity to investigate fully the effects of the NPS and make recommendations to which the government must respond. The draft NPS could be the subject of a debate on an amendable motion that the government must win before the NPS could be designated. The airports NPS specifically referred to the development of a third runway at London Heathrow airport, a development that would have resulted in the demolition of many houses, schools and other public buildings. The sensitivities and uncertainties surrounding this development resulted in the airports NPS being one of the last of the original list of NPSs included in the PA 2008 to be designated.

The initial draft NPS was laid before parliament on 2nd February 2017, accompanied by a written ministerial statement by the Secretary of State for Transport giving details of the publicity and consultation arrangements required under the Act and appointing a former lord justice of appeal who had also been the senior president of tribunals to ensure the consultation process was carried out correctly.

The transport select committee resolved to inquire into the airports NPS on 20th February 2017 but had only progressed to the receipt of written memoranda by the time a general election was called for 8th June 2017. The committee was reconstituted after the election and met first on 13th September 2017. The original draft NPS was replaced with an updated version on 24th October 2017 and introduced in a ministerial written statement by the Secretary of State for Transport (Hansard 2017). The select committee held meetings at which oral evidence was given by 31 witnesses, and received memoranda from 88 interested individuals and organisations. It held a further four meetings to consider the issues and issued its report (its third of the parliamentary session) on 19th March 2018. On 15th March 2018 the House of Lords debated a motion, agreed without a division, that

'... this House approves the National Policy Statement on new runway capacity and infrastructure at airports in the South East of England.'

(Hansard 2018b)

A second draft airports NPS, with a scope much broadened from the first draft, as demonstrated by its new title of 'Airports National Policy Statement: new runway capacity and infrastructure at airports in the south-east of England', was published on 5th June 2018 and introduced by a statement to the House of Commons by the Secretary of State for Transport (Hansard 2018c). The statement was repeated in the House of Lords on the following day by Baroness Sugg, who then answered a number of questions from members of that House, although there was no formal debate (Hansard 2018d). The NPS was the subject of a debate in the House of Commons on 25th June 2018 on a motion that

'... this House approves the National Policy Statement on new runway capacity and infrastructure at airports in the South East of England, which was laid before this House on 5 June 2018.'

This was carried by 415 votes to 119 and the NPS was designated by a written statement from the secretary of state on the following day. (Hansard 2018e)

7.5 Discussion

While parliament was content to pass ministerial decision-making powers to an unelected administrative body in the shape of the IPC, albeit with objections from some of its own members as well as from the formal opposition, it is apparent from the analysis of the NPS designation process that the legislature made considerable efforts to establish and to follow a process by which proposed NPSs could be scrutinised in detail by members of both Houses of Parliament. This process had been developed specifically for the PA 2008, using the newly invigorated select committee processes and the framework established in the Act and modified under the Localism Act 2011.

Thirteen draft NPSs have been laid before parliament, and of these, 12 were formally designated after fulfilling the requirements set out for the process in the Act. The remaining one currently awaits government action in producing a revised draft for further consideration by parliament.

The first eight NPSs to be designated were processed under the original provisions of the PA 2008. The six constituent elements of the energy suite were largely dealt with together, although there were separate debates in the House of Lords on EN-1, the overarching energy NPS, and EN-6, the nuclear power NPS. The provisions of the Localism Act 2011 relating to the consenting of nationally significant infrastructure projects (NSIPs) came into effect on 1st April 2012 under the terms of a statutory instrument, SI 2012/628, Art. 7 (a), and the remaining five draft NPSs were processed under these revised arrangements although one still remains to be designated.

Given the small number of NPSs to be produced, it is difficult to draw valid conclusions from an analysis of the differences in the way in which NPSs were examined under the two procedures. All of the first tranche of NPSs were the subject of a debate on an amendable motion on the floor of the House of Commons, while this only happened for two of the four completed under the revised arrangements. The time taken to designate an NPS, measured in House of Commons working days from the laying of the draft NPS before parliament, was not substantially different for either process, at 268 days for the former and 231 for the latter.

One effect apparent after the changes in the PA 2008 procedure brought about by the Localism Act has been something of a reduction in the transparency of the process. In the first instance, the scrutiny committees recommended that debates be held to examine an amended version of the draft NPS before designation. In the case of some, but not all, of the later tranche, no such recommendations were made. Instead, there was an expectation that the recommendations of the scrutiny committee would be taken into account in producing the final NPS, with the committee chairman or woman receiving a letter from the relevant secretary of state to say how

this had been done. The designation then took place after the relevant period had expired, without further intervention from the legislators. While this process, carried out through 'the usual channels' (co-operation between government and opposition managers to arrange parliamentary business), presumably gave the committee members the chance to examine the revised NPS and to raise any concerns about its contents, it did not have the advantage of being carried out in the more public arena provided by a full debate on the floor of the House of Commons. While one NPS (airports), where particular political sensitivities and difficulties might reasonably have been anticipated, was subject to House of Commons debate, another, where similar difficulties might have been expected (geological disposal infrastructure), was not. A mainly uncontroversial NPS (national networks) was debated while a potentially more difficult topic (hazardous waste) was not. The logic behind the decisions about how these NPSs should be handled was not apparent and, while the results of the scrutiny process may have produced exactly the measures intended by the legislator, the transparency of a democratically accountable process has not been enhanced.

The committee discussions and parliamentary debates on NPSs dealt almost exclusively with practical issues raised by draft NPSs produced by the government. This process was seen as one of improvement of the modalities of the NPSs rather than one that returned to the arguments deployed in the debates on the Act itself. The response of John Woodcock (Labour/Co-op), responding to the secretary of state's opening of the Commons debate on the ports NPS, is typical of the attitudes to the NPS process:

'First, though, let me say what we support. We are pleased that national policy statements are going ahead and that Ministers have chosen to accept the Transport Committee's recommendation that debates on them should take place in Government time.' (Hansard 2011c:Col.901)

A reduction of democratic control of the planning process was one of the indicators of neoliberalism identified in the literature (Lord and Tewdwr-

Jones 2014; Clifford and Tewdwr-Jones 2013; Rydin 2015). The PA 2008 means the exclusion of NSIPs from the TCPA inquiry process, so removing decisions from a forum where local interests might outweigh those of a wider, national interest. So it is apparent that legislators protected the concept of democratic accountability by keeping control of the NPSs in the hands of elected members of parliament, rather than ceding control to the government.

The criticism that local democracy is diminished under the PA 2008 is addressed in some detail in the following chapter on centralisation. Despite assertions that there is no place in the process for local views to be represented (Rydin 2013), there is every opportunity for interested parties to make oral representations during the examination of an application and to make written submissions to the examining authority. The same difficulties face individuals and small organisations in both processes: the difficulty of assessing large quantities of technical material, and the time and expense of participation.

It can be argued that the Act increases democratic control, in that parliament defines the parameters against which any application for a development control order for an NSIP must be judged. This is done against a panoply of policies, laws and directives defined within the relevant NPS, contrasting with the less defined approach of the Town and Country Planning Act (TCPA) process, where inspectors heading inquiries were less rigidly constrained in terms of what to consider in deciding the applications before them. The Sizewell B inquiry, for instance, saw the inquiry looking into the merits of various types of nuclear reactor and the government's policy on nuclear energy (O'Riordan et al 1988). There are parallels between opinions on public inquiry outcomes and Selden's famous views on equity varying with the length of the chancellor's foot (Pollock and Fry 1927:43). The PA 2008 provides certainty of the inputs required and the process to be followed, in addition to assuring democratic validity.

7.6 Conclusions

A lack of democratic accountability was identified in the literature review as an indicator of increasing neoliberal tendencies in legislation and elsewhere. Accountability was a recurring and significant theme within all parts of the legislative processes that produced the PA 2008, as well as those parts of the Localism Act dealing with the consenting of NSIPs. The focus of these concerns came to be the degree of accountability that was appropriate for parliament to assume for the consenting process. The supremacy of parliament's views in matters of national concern over those of local or sectional interests is obviously a matter of constitutional logic and precedent. There was no sustained objection in the parliamentary debates to this position which could be considered normative. The exercise of this democratic control was recognised as essentially a matter of properly defining and controlling the environment in which planning decisions for NSIPs would be taken. Government and opposition contributors to the second-reading debate acknowledged the point, and it was supported by backbench contributors. The secretary of state said that

'The national policy statements will be subject to debate across the country and in Parliament. I want to ensure that there is good parliamentary scrutiny.' (Hansard 2007:Col.29)

and

'It is not a matter for me as a member of the Government to dictate to Parliament how it should scrutinise the national policy statements. However, it is important that a new Select Committee should perhaps be drawn up to consider the range of policy statements..... If Parliament were to want a vote on those issues, that will be the right and proper course to take. I mean to ensure that there is proper parliamentary scrutiny of the national policy statements. It is so important that we get them right, because they are where the accountability in the new framework lies.' (Hansard 2007:Col.30)

Eric Pickles (Brentwood and Ongar, Conservative), leading for the opposition, agreed with this approach:

'We support the idea of national policy statements. We feel strongly that Parliament must have responsibility for devising and testing those vital statements. Matters of vital national importance, such as airports, nuclear power stations, other types of power stations, the disposal of waste plants and major transport links, should be decided by the House.' (Hansard 2007:Col.40)

Backbench contributors supported this approach. Typical was Keith Hill (Streatham, Labour), who said

'The welcome has been general, and rightly so, for two reasons. First, the element of parliamentary scrutiny in the drawing-up of the national policy statements, however that is managed, will serve to democratise the planning process on big national projects. Secondly, because Parliament will have expressed its will on behalf of the people, the national policy statements system must have the effect of speeding-up inquiries on those projects.' (Hansard 2007:Col.46)

There was also a considerable degree of misgiving about the establishment of the IPC as an independent decision-maker. Paddy Tipping (Sherwood, Labour) said that

'Given that the Secretary of State rightly spoke about the importance of Labour planning policy as a way of delivering social change, does she understand the concern of many of us that the infrastructure planning commission will be removed from democratic control? Do we not need to focus on that during the passage of the Bill?' (Hansard 2007:Col.27)

Eric Pickles opined that

'... the Bill creates a new Infrastructure Planning Commission which is fundamentally undemocratic and unaccountable to both local and national elected representatives.' (Hansard 2007:Col.38)

Tom Brake (Carshalton and Wallington, Liberal Democrat) expressed misgivings about the balance in the legislation between private and public interest, particularly in respect of support for those wishing to be represented at examination hearings:

'It is interesting to see how much the Government expect the private sector to benefit from this and, on the other hand, how much they are willing to invest in Planning Aid to ensure that local communities have their views effectively represented. I hope that the Minister accepts that there are sincerely held concerns about the infrastructure planning commission.' (Hansard 2007:Col.51)

However, it was generally accepted in the PA 2008 that the IPC was constrained to follow the NPS process. The expression 'maximising the NPS and minimising the IPC' was endorsed by a number of contributors to the debate including Labour's Keith Hill (Hansard 2007:Col.48) and the Conservatives' James Duddridge (Hansard 2007:Col.103). This was seen as defining the parameters within which the IPC would work so that it would remain under the control of a democratically elected legislature.

This control has been transitory, however, since an NPS, once designated by the relevant secretary of state, would be subject to review only under Section 6 of the Act when the secretary of state thought it appropriate. The legislature would nevertheless retain its role of scrutinising any proposed changes to the NPS. In the event, no reviews of the originally designated NPSs have so far been completed. This may be the cause of concern, in that some of the circumstance at the time of designation have changed, possibly to the extent envisaged in Section 6(3)(a)

'In deciding when to review a national policy statement the Secretary of State must consider whether –

(a) since the time when the statement was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out was decided.'

Acts of parliament are introduced to resolve some perceived problem, perhaps amended as circumstances change, but they remain generally unaltered until their function is no longer relevant or needs to be revised by further legislation. They are generally fixed points in the development of society, while neoliberalism is seen as being uneven, roiling, variegated and constantly changing (Peck 2010:23). The requirement in the Act to review and update NPSs provides a mechanism through which the legislation can be updated to meet changes in political, economic and business practice, as well as the more obvious scientific and technological advances taking place over time.

These latter have been substantial in a number of the areas covered by the NPSs (nuclear power, renewable energy and airports, for instance) but the secretaries of state have so far not seen fit to carry out reviews of the NPSs. However, early consultations have taken place on energy infrastructure (DBEIS 2020:55) and national networks (Hansard 2021), while a request from various parties to review the airports NPS has been refused (DfT 2021). The possibility that a challenge to the validity of an NPS will be used in any inquiry into a development consent order application under the PA 2008 becomes more likely as time progresses and circumstances change.

It can be concluded that parliament went to considerable lengths to adapt its procedures to ensure democratic accountability was demonstrated in the formulation of NPSs, as these were the main lever with which to control the consenting system for NSIPs. In the event the changes wrought by the Localism Act in abolishing the IPC and returning to the relevant secretary of state the role of decision-maker upheld and reinforced both the appearance and reality of direct democratic control of the process. It removed at a stroke one of the main causes of objections that the Act was undemocratic because it transferred the decision-making role to an unelected body without direct political control. Given that the Act makes provision for interested parties to present their views at each stage of the assessment process, there is scope for local views to be expressed through individual action and through local authority bodies. However, as will be explained in the following chapter, it is inevitable that national requirements, while taking into account local views

and needs as far as possible, must be accommodated. True democratic accountability involves the needs of the majority being satisfied after a full assessment of the NSIP proposal.

Chapter 8 Centralisation and Decentralisation

8.1 Introduction

Various academic disciplines have differing definitions of centralisation: for organisational theorists, the degree of centralisation or decentralisation in an organisation is defined by the hierarchy of authority and the degree of participation in decision-making (Andrews et al 2009), while management academics see it as

'... the horizontal or vertical concentration of the disposal right over any type of resource.' (Szell 2017:99)

The concepts of centralisation and decentralisation in the political and administrative sciences have their origins in business and management studies. Centralisation can be seen as the process by which the activities of an organisation, particularly those regarding planning and decision-making, become concentrated within a specific part of that organisation. In political science, centralisation refers to the concentration of a government's power into a single governmental entity. In business studies, centralisation and decentralisation refer to the managerial and administrative level at which decisions are made in the chain of command. L.D. White (quoted in Marume and Jubenkanda 2016:106) concluded that

'The process of transfer of administrative authority from a lower to a higher level of government is called centralization; the converse, decentralization.'

Political centralisation and decentralisation have been the subject of comment and analysis from a wide variety of writers, from V.I. Lenin (quoted in Marshall, A 2014) to Kollman and Worthington (2020). Devolution within the British state represents political decentralisation, while the measures introduced by the Planning Act 2008 (PA 2008, the Act) represent a centralisation of management and bureaucratic functions, albeit mainly

within England, with peripheral impact only in Wales, minimal impact in Scotland, and none in Northern Ireland. It is this aspect of centralisation and decentralisation that is to be considered here.

In the practice of planning in Great Britain, centralisation can be thought of as the process by which central government takes back from more localised and lower levels of government those powers that had originally been delegated to them. This was the case in some of the older classes of major infrastructure, but the process can also be seen in operation with newer classes, such as the geological disposal of nuclear waste, in which matters never specifically within the purview of local planning authorities have now been reserved to the secretary of state's decision under the Act by the Infrastructure Planning (Radioactive Waste Geological Disposal Facilities) Order 2015 (SI 2015/949).

This chapter will show that centralisation in planning is not a new feature of the consenting process for major projects introduced by the PA 2008: it has been a consistent feature of the planning system in Great Britain for each of the classes of infrastructure covered by the Act since the inception of the development process for that element of infrastructure. The chapter will examine the place of centralisation as an indicator of neoliberalism, and the place of centralisation in the planning system in Great Britain. It will then go on to look at how the consenting of individual areas of infrastructure fit into this picture, and to draw conclusions about the validity of the claims that the Act is a neoliberal measure because of centralisation.

The Act has been characterised as a centralising force within planning in England and this, in turn, has been seen by some commentators as an advance of neoliberalism (Lord and Tewdwr-Jones 2014). A Marxist analysis gives support to a view of centralisation as a characteristic of capitalism, and by implication of neoliberalism, describing competition and credit as the two most powerful levers of this process, concentrating power in fewer and fewer hands (Marx 1996). However, this is not the only explanation for the centralising tendencies to be found in modern states. The Marxist-Leninist governments of the former Soviet Union and its satellites were among the

most centralising of states, as was Maoist China, although some see modern China as having now adopted neoliberalism (Harvey 2005:120). On the other hand, there are arguments in business management and governmental terms that centralisation provides focus on desired outcomes and improves efficiency and the quality and timeliness of decisions (DCLG 2012). It can be concluded that, as a means of political management, both centralisation and decentralisation can be characterised by differing societal and political norms, attitudes and cultures, and identified in a variety of historical contexts.

Both centralisation and decentralisation have been seen as indicators of neoliberalism because of the hallmark relaxation of government legislation controlling what were once solely public activities (Lord and Tewdwr-Jones 2014; Castree 2006; Peck and Tickell 1994). Peck (2010:22-26) further identified this effect as 'roll-back' and 'roll-out' neoliberalism: the removal by government of laws and regulations preventing the unfettered operation of free markets, followed by the introduction of laws and regulations that actively assist in the operation of a market economy. This factor was identified in Chapters 1 Section 4 and Chapter 3 Section 5 as an indicator of neoliberalism.

Centralisation could also be considered neoliberal because it removes the ability of locally accountable elected bodies to make decisions about major infrastructure projects and places this duty firmly with central government (Lord and Tewdwr-Jones 2014:351). This represents an increase of state power at the expense of the local, and feeds into the concept of the centralised state that arranges regulation to suit the requirements of the market, rather than those of the democratic process. Against this, it can be argued that in times of devolution, localism and subsidiarity, there is a need to ensure that decisions best taken centrally, such as those relating to purely national issues, are not left to subsidiary bodies, such as local planning authorities, which may be swayed by specifically local issues and concerns.

As shown in Chapter 6, centralisation was not a matter that exercised the legislators to any great extent during the passage through parliament of the

PA 2008, with the issue ranked joint 28th among the themes identified in the House of Commons second-reading debate, as shown in Table 6.1 above. The issue was specifically raised in relation to tree preservation orders (perhaps illustrating the extent of general concern over the issue), with Jacqui Lait (Conservative, Beckenham) identifying the inflexibility and ‘one size fits all’ objections to centralisation when she suggested during the committee stage in the House of Commons that she

‘... understand[s] in principle why the Government want to move tree preservation orders into a regulatory system, but I am concerned that it is a centralising measure. However, I am concerned by about the scope of the new regulatory structure so I hope that the Government will assure us that it will not be drawn as broadly as possible....’ (Hansard 2008:Col.559)

Tewdwr-Jones identified centralisation in planning as being enshrined in law from as early as 1943, with the Minister of Town and Country Planning Act (HM Government 1943) noting that

‘Central government’s role in the land use planning process has not altered significantly since the ... Act first introduced a duty on the part of ministers to secure consistency and continuity in the framing and execution of national policy for land use and development.’ (Tewdwr-Jones 2002:122)

The act sets out this duty in almost exactly those terms at Section 1:

‘It shall be lawful for His Majesty to appoint a Minister of Town and Country Planning, to be charged with the duty of securing consistency and continuity in the framing and execution of a national policy with respect to the use and development of land throughout England and Wales.’

The Trunk Road Act of 1936 and the various gas and electricity acts of the late 19th and early 20th centuries delegated control of major roads and power utilities to various centralised authorities well before the advent of neoliberalism. The widespread post-Second World War nationalisation of the major means of production and distribution, without doubt a major

centralising measure, dated from the same period in which the march of neoliberal thought began, with the founding in 1947 of the Mont Pèlerin Society. But nationalisation was more likely driven by a Marxist dialectic than by any nascent neoliberal sentiment, and even more likely by a desire to maintain the 'command and control' approach to the economic levers employed by the British government during the war, an approach that was presumably thought to have been necessary in bringing the conflict to a successful conclusion (Dutton 2002:156).

To examine the validity of these assertions about the centralising effect of the PA 2008, it is first necessary to examine what is meant by centralisation as it applies in the field of planning, and then to determine whether the Act can be considered to have imposed or facilitated the imposition of centralisation on the planning and consenting of nationally significant infrastructure projects (NSIPs).

8.2 Origins of Centralisation in Planning

The unwritten constitution of the United Kingdom of Great Britain and Northern Ireland is based on the centralisation of all legislative and executive power in the person of the monarch. Parliament itself sits until the monarch dissolves it, prime ministers are appointed by the monarch and acts of parliament are made in the name of the monarch. Parliament's powers and those of the government are, in the constitutional sense, delegated by the monarch, who remains the centre of power. While in reality, the operation of democracy in the country is carried out with no day-to-day reference to the source of this power, the royal prerogative remains. This has been defined as

'... the remaining portion of the Crown's original authority, and it is therefore ... the name for the residue of discretionary power left at any moment in the hands of the Crown, whether such power be in fact exercised by the King himself or by his Ministers'. (Dicey 1959:424)

That there remain areas of contention, even after the establishment of a constitutional monarchy in 1688 following the Glorious Revolution, may be an anachronism that may sometimes play a part in arcane political disputes. However, the royal prerogative has only a nugatory impact on the everyday business of government, to the extent that its reach has never come into play in terms of its effect on planning legislation (Bartlett and Everett 2017).

The powers exercised by parliament on behalf of the Crown are not delegated any further down the chain of government, in that an act made by one parliament cannot bind the hands of any successor parliament: law made can always be unmade. This means, for instance, that powers delegated to local authorities to operate a land-use planning system can be taken back by parliament at any time in the future, if it so decides. In this regard, as in every other, local government bodies at every level are without autonomy and are purely creations of central government. There may be an appearance of local power within the structures established (and changed) by the government, but this is illusory: ultimately power still lies at the centre (King 2017; Wilson and Game 2011).

The way in which infrastructure and other development was controlled in Great Britain was looked at in some detail in Section 5.4, above. In the acts that established the 19th-century structure of local government, there was no reference to the control of development land or the provision of infrastructure over and above those matters that had been within the purview of municipal authorities existing prior to these reforms. However, the Municipal Corporations Act 1882 gave boroughs the power to make by-laws

‘... as to them seem meet for the good rule and government of the Borough, and for the prevention and suppression of nuisances not already punishable in a summary manner by virtue of any act in force throughout the Borough, and may thereby appoint such fines, not exceeding in any case £5, as they may deem necessary for prevention and suppression of offences against the same.’ (Municipal Corporations Act 1882:c.50 S23)

These powers were also given to the other levels of authority set up under the 1894 act, and thus gave considerable power to local authorities to

exercise control over a variety of activities carried out in their areas. The more formalised control of development first emerged from the various town planning acts from 1909 onwards, although ultimate power remained in the hands of the national government (King 2009:151-178).

This position was reaffirmed in 1947, when the Town and Country Planning Act of 1947 (the 1947 act) nationalised the use of land to the extent that any new use was subject to the approval of state authorities through the framework of nationally controlled planning legislation. Land owners no longer had the right to develop land solely as they decided. This was true for all development land, be it for minor changes to domestic dwellings or for the construction of major infrastructure projects. The ownership of the latter was, until the 1947 act, in the hands of private individuals and companies, or of municipal enterprises that had, in many instances, succeeded earlier private developments. They were also subject in most cases to additional legislative constraints from the statutes that had framed the development of roads, canals, railways, ports, reservoirs and other public utilities over the course of many years (Ellis 2017; de Smith 1948).

While applications for planning consent for infrastructure projects were matters administered by and disposed by local authorities, this was done through powers delegated to those authorities by parliamentary legislation. It was made very plain on the face of the 1947 act that the powers delegated were in the gift of the minister and could be withdrawn without further reference under powers contained in Section 15 (1) of the act:

'The Minister may give directions to any local planning authority, or to local planning authorities generally, requiring that any application for permission to develop land, or all such applications of any class specified in the directions, shall be dealt with by the Minister instead of being dealt with by the local planning authority, and any such applications shall be so dealt with accordingly.'

This was the case in some of the older classes of major infrastructure, but the process can also be seen in operation with newer classes, such as geological disposal of nuclear waste, in which matters never specifically

within the purview of local planning authorities have now been reserved to the secretary of state's decision by the Infrastructure Planning (Radioactive Waste Geological Disposal Facilities) Order 2015.

The production of Planning Policy Guidance Notes (PPGs) from 1988 onwards can be seen as a further driver of centralisation in the UK. These were 24 individual guidance notes issued by the Department of the Environment that became, in effect, a framework for a coherent approach to planning across England and Wales. Tewdwr-Jones (2002:121) identified PPGs as providing a strong national strategic direction for the land-use planning process, a function that was appropriate for central government to promote. The PPG series was withdrawn in 2012 and replaced by a National Planning Policy Framework document. This was more broadly drawn than the PPGs, with less emphasis on the detail of how particular issues should be addressed, dealing more with principles than technicalities. It retained the element of centralisation, noting in the introduction to the 2019 version that

'Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions.' (HM Government 2019:4)

The document was updated again in 2021 (MHCLG 2021).

8.3 Devolution

The Town and Country Planning Act 1947 applied to England, Wales and Northern Ireland, while the Town and Country Planning Act (Scotland) 1947 passed by the UK parliament applied the same principles through the medium of the Scottish legislative process. The planning system was centralised and the same in all parts of the United Kingdom and Northern Ireland.

Post-Second World War devolutionary currents affected parts of the Union at different times, and this was reflected in changes to the planning system over a number of years. A Scottish parliament was established with the passing of the Scotland Act 1998, and the planning function became a devolved power. From 1999, Westminster was no longer responsible for the formation of planning policy in Scotland or for its management. Similarly, in Northern Ireland, the devolution settlement contained in the Northern Ireland Act of 1998 included planning as one of the ‘transferred matters’ – issues for which the Northern Ireland Assembly had full legislative powers and the Westminster parliament none. The Government of Wales Act 1998 saw the start of a devolution process which, among other changes, saw Welsh ministers gradually taking over the functions of Westminster ministers with regard to planning in Wales (Torrance 2022).

Overall, the operation of the PA 2008 has only ever applied to England in its entirety. There are a number of measures that deal with border issues between England and Scotland and between England and Wales, including electricity transmission lines, gas and oil pipelines that may cross from one country into another, and ports. A number of matters relating to offshore power generation in Welsh waters and ports remain to be fully devolved, but for most purposes, the planning function is now fully devolved to the Welsh parliament. On a United Kingdom and Northern Ireland scale, therefore, it cannot be claimed that the PA 2008 is a centralising measure, rather it is a demonstration of the effects of decentralisation and devolvement of powers from Westminster to the legislatures of the constituent nations of the United Kingdom of Great Britain and Northern Ireland.

Devolution is obviously a decentralising measure in the sense that central government passes its powers into the hands of a number of other bodies. However, in the case of devolution within Great Britain and Northern Ireland, this may only be the replacement of one centralised form of governance by another. Unless the devolved administrations adopt the principles of subsidiarity, with decision-making being passed down to the lowest level at which those decisions can effectively be made and the central authority taking only those decisions that cannot be taken at a more local level, then

centralisation is still in place. In fact, the three devolved governments each showed some form of double devolution and devolved centralisation in their approach to planning, albeit with provisions that retain the control of schemes deemed to be of national importance to the devolved governments in its own hands (Johnston 2012).

The Scotland Act 1998 delegated the planning function to the Scottish parliament by default as it is not a matter reserved to the Westminster parliament under Schedule 5 of the act as amended by the Scotland Act 2012. The Town and Country Planning Act (Scotland) Act 1997, as amended by similarly named acts in 2006 and 2019, places the responsibility for decision-making with local authorities. The acts institute a system of locally established and administered development plans. National developments and major developments that are 'significantly contrary to the development plan' are to be decided by a meeting of the full council after applicants and objectors have had the opportunity to attend a hearing before a council committee. In all cases, the council must make decisions in line with the development plan unless 'material considerations' justify not doing so. This approach retains an element of centralisation in that each development plan must be sanctioned by the Scottish ministers, albeit that the plan's execution is decentralised (Torrance 2022:9-15).

In the case of Northern Ireland, under Section 4 of the Northern Ireland Act 1998, planning was defined as a transferred matter, in that the function was not included as an excepted matter under Schedule 2 or a reserved matter under Schedule 3. A centralised planning system was operated until 1st April 2015, when the reformed two-tier planning system introduced by the Planning Act (Northern Ireland) 2011 came into law, transferring responsibility for the majority of planning functions from central government to district councils. Applications for consent for developments considered by the Northern Ireland Department of the Environment to be of significance to the whole or a substantial part of Northern Ireland or to have significant effects outside Northern Ireland continue to be dealt with centrally under Section 26 of the act (Torrance 2022:21-29).

In Wales, the planning procedure following the Government of Wales Act 1998 continued to map that of the UK prior to devolution. The PA 2008 was more limited in its application to developments in Wales than was the case in England, and it was not until the Planning (Wales) Act 2015 that differences between the systems began to develop, with Welsh ministers becoming the decision-makers with regard to Developments of National Significance (DNS). This took away the decision-making powers from local authorities for some classes of development, essentially certain types of electricity generating schemes, and put them into the hands of the Welsh ministers (Torrance 2022:16-20).

8.4 A Historical Perspective of Centralisation

This section looks at the way in which the elements of infrastructure covered by the PA 2008 have come to be considered matters of national significance, and at how the consenting of these has been dealt with over time. It shows that there has been, almost from the inception of the technology that made these developments possible, a role for parliamentary legislation to permit and control them. This has largely been played out in an arena of private enterprise spurred, no doubt, as much by the anticipation of financial gain for the developers as by a desire to promote social benefit and welfare.

The concept in Great Britain of infrastructure of national significance has sprung from a number of different sources but it cannot be claimed that central government has been instrumental in planning and delivering many elements of the infrastructure seen in this context, with the development of canals, railways, and public utilities all beginning as entrepreneurial exercises. It could be argued that road building was an exception to this, with the needs of the military and the governance of Scotland and Ireland providing the drivers for the building General Wade's Scottish roads in the 18th century and of Telford's A5 in the 1820s, but the concept of a national road network would not be adopted by the government until the Trunk Road Act of 1936. Railways developed as business opportunities presented

themselves to investors but were not developed to provide a coherent, country-wide service until nationalisation under the Transport Act 1947. This trajectory was typical of most other infrastructure types included in the PA 2008: developments were initiated by entrepreneurs whose ability to manage and finance their projects was overtaken by technical complexity and increasing demand, leading to their becoming nation-wide concerns that could only be managed effectively at a national level. The utilities were very much in this mould: local gas and electricity production and distribution organisations, owned either privately or municipally, were subject to many amalgamations and rationalisations, especially during the first part of the 20th century, before finally nationalised by the Electricity Act 1947 and the Gas Act 1948. These nationalising acts took place shortly after the end of the Second World War, a period during which all aspects of national life were controlled by the government and the structures of post-war society were defined. It is in this period that the concept of national infrastructure planning can first be found.

There would be few arguments against the need for a nationally planned motorway and trunk road network, a system of mainline railways, a national distribution network for gas and electricity with adequate production facilities, or the need for water storage and supply. The provision of a central storage facility for nuclear waste could also be reasonably justified on grounds of national need. Other developments defined in the Act as nationally significant are perhaps less easily justified. While it might be logical for the government to have a view about the provision of UK airports for internal and international air transport, the airports National Policy Statement (NPS) has the subtitle 'new runway capacity and infrastructure at airports in the South-East of England'. It does not seek to address airport capacity or distribution in the rest of the country other than to opine in its introduction that

'... with very limited capability at London's major airports, London is beginning to find that new routes to important long-haul destinations are being set up elsewhere in Europe. This is having an adverse impact on the UK economy, and affecting the country's global competitiveness.' (DfT 2018:5)

Similarly, the waste-water NPS relates almost exclusively to a scheme to alleviate problems with drainage in London, and makes no reference to any other specific scheme.

Additional elements have been added to the list of NSIPs by means of secondary legislation or reference in new acts of parliament. It becomes apparent that there is something of a circular argument about whether a particular type of infrastructure project is of national significance or not. The NPS process lies in the hands of parliament in that parliament has to have examined the government's proposed document, satisfied itself through the select committee procedure that the measure is both appropriate and adequate, and assured itself that it has gone through the necessary parliamentary processes before it can be designated by the secretary of state. However, the decision as to which elements of infrastructure should be defined as nationally significant was included in the body of the PA 2008 at Section 14, with the details of size and scope for each provided in Sections 15 to 30. Under Section 14 of the Act, the government has complete control over what projects are considered under the PA 2008, and can bring schemes into its ambit at will and without reference to any local planning authority or other body, providing they fall within the categories of infrastructure defined in that section. The centralising direction of this approach is illustrated by the case of the Thames Tideway Tunnel waste-water scheme discussed previously, where the specific scheme was referenced within the NPS:

'The Secretary of State made an announcement on 6 September 2010 that development consent for the Thames Tunnel project ... should also be dealt with under the regime for nationally significant infrastructure projects. It is intended that the Thames Tunnel will be brought within the direct scope of the Planning Act 2008.' (DEFRA 2012:5)

Within England, all matters relating to the consenting of NSIPs are dealt with centrally through the mechanisms established under the Act as amended. However, when reviewing the way in which each of the elements of infrastructure that are now part of the PA 2008 regime has been dealt with in

the past, it becomes apparent that central government has always played a part in the providing permissions for such developments to take place. Looking in turn at the type of project listed under Section 14 of the Act shows that almost every class of infrastructure development has been the subject of government permissions since the earliest days of its development. Considering each in turn and providing only a brief description of the earliest consenting arrangements illustrates the point.

Generating stations and transmission lines. The world's first coal-fired electricity generating station was the Holborn Viaduct power station, which started operating in 1882. The Electric Lighting Act 1882 empowered the Board of Trade to issue licences to supply electricity, valid for a renewable period of seven years. The issue of licences, which could include regulations and conditions, required the consent of local authorities. The Electric Lighting Act 1909 gave the Board of Trade powers to authorise any electricity undertaking to purchase land compulsorily in order to build power stations, but requiring specific consent to be obtained from the board (Hannah 1979). The inquiry into the Sizewell B nuclear power station was convened under the powers of the 1909 act (O'Riordan 1984).

Gas. The first UK gas company, the London Gaslight and Coke Company, was established by royal charter in London in 1812 (Falkus 1967), with the first consolidated legislation, the Gasworks Clauses Act 1847, providing a framework that constrained the hitherto unregulated gas industry. This act, with the similarly titled 1871 act, defined all matters relating to gas production and transmission.

Underground gas storage facilities. Gas storage in depleted reservoirs and purpose-made caverns is controlled by the Health and Safety Executive under the Control of Major Accident Hazards Regulations 1999.

LNG facilities, gas reception facilities and gas transporter pipelines. In addition to the usual requirements to obtain development consent under the various planning acts from 1909 onwards, these facilities were all subject to hazardous-substance consents provided by the Hazardous Substances Authority (generally the local planning authority) on advice given by the

Health and Safety Executive under the Control of Major Accident Hazards Regulations 1999.

Other pipelines. The Pipelines Act 1962 made it unlawful for any cross-country pipeline to be constructed without the specific permission of the minister.

Highway-related developments. The turnpike acts of the 17th and 18th centuries enabled the improvement of roads in England by commercial trusts (Albert 1972). The first motorway, the Preston bypass, now part of the M6, was constructed under powers set out in the Special Roads Act of 1949, which allowed for the restriction of traffic types permitted to use the new road. The act was replaced by the Highways Acts of 1959 and 1980. The Trunk Road Act of 1936 took the control of specified major roads from local authorities and placed their management in the hands of the Secretary of State for Transport (Wootton 2010).

Airport-related developments. Existing airports are generally developments of Second World War airfields acquired under wartime regulations (Walpole 2009). Developments have been subject to Town and Country Planning Act applications, with major developments such as Heathrow Terminal 5 being 'called in' by ministers. The development of UK airports was the subject of various government pronouncements, including a 1993 White Paper 'The Future of Air Transport' (HM Government 1993), which set out the expected pattern of development at each of the UK's main airports.

Ports. All major changes to harbour facilities in the UK have been subject to private acts of parliament. Individual 'trust ports' were established by parliament under statute, while other ports remained in either private or municipal ownership (Palmer 2020).

Railways. Most railways were established by private acts of parliament and controlled by the various railway acts before nationalisation under the Transport Act of 1947 (Nash 2002). Most changes and improvements were

carried out as permitted development but with larger developments consented under the terms of the Transport and Works Act 1992.

Rail-freight interchanges. Mainly constructed under permitted development rights from railway undertakings or under permissions from local planning authorities under the Town and Country Planning acts.

Dams or reservoirs. Generally constructed under specific private acts of parliament but with safety and operating methods constrained by central safety bodies under the Reservoirs Act 1975.

Water-transfer facilities. As for dams and reservoirs.

Waste-water treatment plants, including transfer or storage, desalination plants and hazardous-waste facilities. Constructed under permissions from local planning authorities under the Town and Country Planning acts.

Radioactive waste geological disposal. None yet constructed or consents sought.

8.5 A Centralising Tendency?

It is apparent that in most cases the consenting of large infrastructure projects was originally a matter dealt with by central government: there was no other way for those seeking to construct a proposed development or to install a distribution network to gain access to land they did not own. Specific legislation was introduced to manage the establishment and operation of many of the classes of infrastructure dealt with under the PA 2008 as they developed. The Act can be seen as a means of rationalising the disparate forms of consenting process into a single and more transparent system. This in itself is a centralising measure, in that control of the single system must reside in a centralised body, in this case parliament, through the executive powers of a government minister. In other cases, these functions were originally delegated to local planning authorities and have been returned to ministerial, hence centralised, control. These instances were waste-water

treatment plants, including transfer and storage facilities, and desalination plants. Hazardous-waste facilities and the geological disposal of radioactive waste were never matters devolved to local planning authorities. In each case, it is informative to consider the reasons for the return to ministerial purview.

In cases where the consenting function was delegated to local authorities under the terms of the various planning acts, the overall control remained with central government, as is demonstrated by the 'call-in' provisions within the acts. The current version, the Town and Country Planning Act 1990, gives the secretary of state the power to direct the local planning authority to refer to him or her an application for a decision under Section 77 of the act. The secretary of state also has the power to direct that the local planning authority should not deal with the matter until a decision about whether to exercise call-in powers has been made. The guidance issued by the Planning Inspectorate notes that:

'The Secretary of State will, in general, only consider the use of his call-in powers if planning issues of more than local importance are involved ... If an application is called in, it may be that the local planning authority support the application (and may have granted permission if it had not been called in). In these cases the only opposition to the proposed development may be by local residents or special interest groups, statutory consultees or other Government Departments.' (PINS 2020:9)

Where the local authority itself is an objector to an application for planning consent, it is usual for the secretary of state to call the application in for his or her decision. In these cases, the decision on whether or not to grant planning permission is taken by the secretary of state, usually after a public inquiry, with no input from the local planning authority other than possibly as an objecting participant in the inquiry process.

The use of the PA 2008 procedure provided certainty about how applications for consent to construct NSIPs are to be handled, by removing any discretion that the secretary of state could have chosen to exercise. The process still leaves an option for the government to ask parliament to extend the scope of

the Act to include new classes of project within its ambit or to amend the coverage of an existing category under Section 14 of the Act by means of secondary legislation.

Waste-water treatment, including transfer and storage, was included in the NSIP definition, with capacity limits set at levels that ensured that only schemes serving populations of 500,000 and above would be included in the process (DEFRA 2012). At Paragraph 1.2.1, the NPS defined the Thames Tideway Tunnel (TTT) project as one that must be considered under the NPS, and Section 2.6 – ‘Nationally significant projects for which need has been demonstrated’ – identifies two schemes only: the TTT and the associated Deephams Sewage Treatment Works. The ministerial statement of 7th September 2010 (not 6th September as quoted in the NPS and repeated in the examining authority’s report (Hansard 2010b:Col.10WS; PINS 2014c:35), set out the reasons for embarking on the scheme but made no mention of the reasons the scheme should be brought within the ambit of the Act. It is only speculation to suggest that this had to do with the fact that the scheme passed through 14 different London boroughs, each of which was a local planning authority and would in addition be subject to the Greater London Authority’s planning oversight. While such a major scheme would almost certainly have been called in by the secretary of state, the resulting public inquiry could have been difficult, with local authorities, statutory undertakers and a large array of other public and private bodies and individuals objecting to the scheme, and many questioning the need for it. In defining its policy on waste-water schemes for the Thames, the government removed the possibility of objection to the scheme on grounds of principle remote from the practicalities of the proposal, while allowing objections from local authorities and others with concerns about the detailed design and application of the new scheme. The provision of an NPS and the framework of the PA 2008 would provide a means of defining and managing the process that might otherwise have followed a similar temporal path to the Sizewell B and Heathrow Terminal 5 inquiries.

The extent of the potential difficulties in securing planning permission for major infrastructure projects in this area is illustrated by the history of the

consenting of a large desalination plant in London at the start of this century. In 2004, Thames Water submitted a planning application under the Town and Country Planning Act 1990 to the London Borough of Newham for the construction and operation of a desalination plant at Beckton, in east London, capable of providing as many as 400,000 households with water (Water Technology 2018). Although the borough authorities were minded to grant permission, the mayor of London used his planning powers to direct that permission be refused on the grounds that water loss from damaged water mains and service pipes should be addressed before additional resources were mobilised. Following a public inquiry in 2006, an appeal by the undertaker was successful. The mayor continued with his objections and pursued a further legal appeal. In 2008, however, following a mayoral election and the defeat of the incumbent, his successor withdrew the action and the plant was finally commissioned in 2010.

Desalination plants were included in the scope of the PA 08 under The Infrastructure Planning (Water Resources) (England) Order 2019 (S.I. 2019/12). There is nothing to suggest that the inclusion of this type of infrastructure under the Act's provisions was influenced by the Beckton case, but there is nothing in the parliamentary record to indicate why else this should be the case. It might be thought an obvious attempt to avoid a repetition of earlier difficulties with large desalination plants, which were considered essential parts of the national infrastructure.

The construction or alteration of hazardous-waste facilities is an infrastructure classification of relatively modern invention. Hazardous waste was not distinguished from the general waste dealt with under the Public Health acts of 1875, 1925 and 1936. It was only with regulations made under the Control of Pollution Act 1974 (CoPA) that various categories of waste were separately identified. An offence under Section 3 of this measure was committed if any '*poisonous, noxious or polluting substance*' was deposited on land where its presence was '*likely to give rise to an environmental hazard*'. In 2004, under CoPA regulations administered by the Health and Safety Executive, it became illegal to dispose of hazardous and non-hazardous materials together. While in many cases local authorities

continued to operate non-hazardous waste-disposal sites, the identification, construction and operation of sites that disposed of hazardous material became increasingly the domain of the private sector. Perhaps unsurprisingly, the acquisition of such sites, while essential for the continuing operation of many sectors of industry, was not something that was much welcomed by those living nearby. The involvement of local planning authorities in the consenting of such sites would almost inevitably have led to the calling-in of the planning applications for ministerial decisions, and the option to place the whole process within the ambit of the PA 2008 with a NPS would obviously provide the minister with a less convoluted path to a decision: avoiding objections on the principle of the development while retaining a path for objections on local issues and matters of detail to be raised.

Similarly, with the geological disposal of radioactive waste, a new consenting arrangement has been devised within the structure of the PA 2008 to deal with the consenting of a type of infrastructure that had never before been constructed and, as such, in which a local planning authority had never previously been involved. In this case the NPS was designed to expand the consultation and information stages of the procedure in order to ensure that local people were fully apprised of plans for the development before they were finalised and taken into the PA 2008 process. Again, the advantages to a minister are obvious of a mechanism that allowed the process to avoid being mediated by the offices of a local authority and of using a closely defined process.

It can be seen, therefore, that the infrastructure developments dealt with under the PA 2008 arrangements have always been dealt with centrally. Thus the Act itself can be said to provide a continuing support to centralisation, but not in any sense to have had the extension of centralisation as one of its prime purposes. At the same time, the Act has provided a means of removing nationally significant infrastructure from the arena of local politics, with all its potential for difficulty and delay.

8.6 Centralisation and National Need

While there will always be arguments about the role of central government in society, it would be hard to argue that the executive and legislature of a modern state should not have to the fore among its policy objectives not only the security of the state but concerns about the economic welfare of its citizens. From the extremes of the 'omnipotent state' and 'that government is best which governs least' (Thoreau 1849), there is a practical path to be followed that sees the state as providing a framework for utilities and networks to support those requirements of modern life and employment that can only be delivered effectively through co-ordinated planning and delivery.

Many infrastructure developments in England, and the United Kingdom more generally, were undertaken without any thought of centralisation. While the routes taken by roads and canals between two places would generally be defined by the physical geography of the area, the same was not necessarily true of railway connections. Similarly, the economic viability of networks, even if properly considered at the time, was subject to change as newer technologies impinged on the infrastructure itself, or on the industrial and manufacturing enterprises where service was provided and profit gained. These drivers saw the virtual end of canals as a method of mass transportation in the face of the development of the railway, and the rationalisation of the railway industry in the face of changing demand and competition from road transport. In the case of gas and electricity supply and distribution, the logic of local manufacture and generation was overtaken by the economies of larger-scale production and of importing options, coupled with more extensive distribution networks. These naturally required a wider control and led logically to nationwide management structures. Water resources and distribution also followed this logic, albeit more constrained by the geography of water catchments and the expense of moving water long distances through pipelines. The need for a high-speed road networks outside the direct control of local authorities was seen in the development of a centrally planned, constructed and maintained network of trunk roads and motorways. The location of ports, certainly, and airports, to some extent,

were defined by geography, but their overall capacity to serve the needs of the population in terms of imports, exports and personal travel is something that has become a national rather than a strictly local concern. As noted in the previous section, other areas of infrastructure of more recent provenance, such as the disposal of hazardous and radiological waste, have come to life fully formed as matters for national rather than local management.

In the planning of significant national infrastructure, there is a balance to be struck between the national need and the views of those affected by the development itself, and much has been written about the tensions between the two. The impact of the PA 2008 in this area has been the subject of extensive writing (Natarajan et al 2018; Rydin et al 2015; Lee et al 2013), although this has tended to concentrate mainly on the position of the individual and of discrete communities affected by infrastructure developments, especially renewable energy projects such as wind farms. It has been noted earlier that very little academic literature has focused on the nature of the PA 2008, although a number of studies have looked at specific aspects of its operation. Devine-Wright notes that those studies, generally relating to wind farms, are without a defined theoretical structure.

'There is little sense of theory-driven applied research on wind farm perceptions. As a consequence, the literature has been more successful in describing perceptions of wind farms rather than providing substantive explanations of these.' (Devine-Wright 2005:136)

The consideration of NSIPs must, in the end, weigh the national need for the development against the rights of individuals not to be inconvenienced and disturbed by it. At the limit, and inevitably, the national need must take precedence. While it is a truism of the legal profession that 'hard cases don't make good law', it was the case that during the two world wars, the Defence of the Realm Act 1914 and the Emergency Powers (Defence) Act 1939 and its successor legislation gave the government extensive powers to take control of land and property as it saw fit, to support the national interest. It is inevitable that an overriding national interest cannot be denied on the

objection, however valid in its own terms, of an individual or a small group of individuals.

The PA 2008 defines where the national interest lies in terms of infrastructure and lays out through NPSs how these interests must be accommodated by those promoting national infrastructure schemes. The Act itself does nothing directly to promote such schemes but provides the framework within which applications for development consent orders (DCOs) may be pursued. It defines a process of publicity for, and consultation about, the individual scheme, and sets out within each of the individual NPSs current government policy, the perceived need for new projects, details of the decision-making process and the assessment principles, and the need for an Environmental Statement and to demonstrate compliance with the Habitats and Species Regulations. In addition to requiring alternatives to the particular scheme to be examined and, in some instances, defining the type of alternative to be examined, it requires the scheme to meet 'good design' criteria. These are not only architectural but also set out the criteria for climate-change adaptation; pollution control and other environmental regulatory regimes; safety; hazardous substances; health; common law and statutory nuisance; and security considerations. Generic impacts are also addressed in each case, including air quality and emissions; biodiversity and geological conservation; civil and military aviation and defence interests; coastal change; dust; odour; artificial light; smoke and steam; insect infestation; flood risk; historic environment; landscape and visual; land use including open space; green infrastructure and green belt; noise and vibration; socio-economic considerations; traffic and transport; waste management; and water quality and resources. This process is centralising in the sense that the way in which each application for a DCO is to be prepared, and is then disposed of, is predetermined, and the matter is judged against the same criteria as every other application.

The variables in the process are those introduced by consultees and interested parties whose views on the relevant local aspects of the application are added to the considerations to be assessed by the secretary of state as the decision-taker. The provisions of the Act are seen to be all-

encompassing, leaving only marginal matters of particular and specific interest to those affected by the physical location of the infrastructure to be considered over and above the coverage offered by the NPSs. In this, the Act has removed matters of principle from the purview of the consenting process, with the examination of the application essentially being confined only to ensuring that the requirements of the NPS will be met.

The PA 2008 consenting process is also centralising in that the national interest is defined entirely by the government. In the original formulation of the Act, the decision-taker was the Infrastructure Planning Commission (IPC), a quasi-independent body whose decisions were nevertheless constrained by the legal framework contained in the Act and in the NPSs. Under these arrangements, it would have been entirely possible to establish regional or local bodies to carry out the functions of the IPC (if somewhat difficult to achieve in terms of providing administrative and legal support), with each such body constrained in the same way by the same legalities. This could have achieved at least the appearance of a more direct local involvement with the decision-making process as might have complemented the ethos of the localism agenda espoused by the coalition government of 2010, if not by the preceding Labour government, which brought in the 2008 measure. Instead, the Localism Act 2011 contained 19 clauses of centralisation in that it abolished the IPC and placed the decision-making role squarely in the hands of the government through the agency of a secretary of state. During the debates before its enactment, the issue of centralisation was not raised in this context (see Section 6.8 above), and the possibility of spreading more 'localism' in the revised arrangements was not mentioned. The concepts of subsidiarity were not used as an argument against the changes to the consenting process for NSIPs at any point during the debates on the Localism Bill, even though those concepts were central to the intent of the remainder of the legislation. Parliament apparently recognised that national needs should be considered and disposed of nationally.

8.7 Conclusions

That the taking back of powers previously delegated to local authorities in the various Town and Country Planning Acts was not the cause of any detailed objection or discussion during the parliamentary progress of the Act illustrates the normative nature of centralisation, a potential indicator of neoliberalism, in the planning process.

Planning in general has been subject to many changes since the days of the Thatcher governments. However, the consenting of major infrastructure projects was never part of a neoliberal 'roll-back' process, and the Town and Country Planning Act procedures established in 1947 continued to operate, although amended, as far as major infrastructure projects are concerned, by the Highways Act 1980 and the Transport and Works Act 1994.

The assertions made by Tewdwr-Jones (2014) and Clifford and Tewdwr-Jones (2013) that centralisation is an indicator of neoliberalism may be valid, but it cannot be said that the PA 2008 introduced centralisation into the English planning system, or that this was done in an effort to promote a neoliberal agenda. Planning was always a centralised function, with power to change the process lying solely with the government, albeit that its operation was delegated to local authorities. Later years have seen some decentralisation of the process, with most planning powers passing to the devolved legislatures. However, the basic understanding that the planning control of major nationally significant infrastructure projects is a matter for central government has not been either furthered or displaced by the changes brought about by the PA 2008.

There has never been a 'roll-back' of centralisation in the planning of major infrastructure in Britain, in the sense described by Peck (2010). The evidence for a 'roll-out' of either centralisation or of decentralisation in the same field is unconvincing, since this aspect of planning has never been anything other than centralised. So the alleged neoliberal intentions of the Act cannot be evidenced on the grounds that it furthers centralisation, and certainly not on the grounds that it supports decentralisation.

Chapter 9 Business Empathy and Orientation

9.1 Introduction

In considering the evidence for neoliberal attitudes or intent in the parliamentary debates that led to the Planning Act 2008 (PA 2008, the Act) it became apparent there would be a need to look at the extent to which parliament had the interests of business in mind during the process of enactment. 'Business empathy and orientation' was considered to be the best way to define this interest, although several other formulations were considered.

'Business bias' was pejorative in tone, suggesting a prejudice in favour of business and implying that to be supportive of business interests was not something to be expected of a legislature.

'Market orientation' is a term with a variety of meanings, many of them associated with the academic study of marketing. Kohli and Jaworski (1990:6) defined market orientation as

'... the organization-wide generation of market intelligence, dissemination of the intelligence across departments and organization-wide responsiveness to it.'

They noted that

'Given its widely acknowledged importance one might expect the concept to have a clear meaning, a rich tradition of theory development, and a related body of empirical findings. On the contrary, a close examination of the literature reveals a lack of clear definition, little careful attention to measurement issues, and virtually no empirically based theory. (Kohli and Jaworski 1990:1)

It was this lack of precise definition that led to the term being rejected for use in the present context. 'Business empathy and orientation' was selected as it

characterises an understanding of business aims and requirements. It implies that maintaining and promoting business interests generally should be contained within general societal concerns. The phrase in this context is used to indicate a predisposition on the part of legislators to consider the interests of business sufficiently important for them to be taken into account in deciding on the content of the Act. The processes by which this perception of importance might develop are to be found in the nature of the parliamentary process itself, in the wider political environment through which special-interest groups seek to influence the path of legislative developments, and in the nature of the legislation itself and the context in which it is enacted.

An affinity and concern for the interests of 'business' is seen as an indicator of neoliberalism in much academic literature (Birch and Siemiatycki 2016; Allmendinger 2016; 2001; Lord and Tewdwr-Jones 2014; Marshall 2013b; Clifford and Tewdwr-Jones 2013; Peck 2010): this factor was noted in Chapters 1 Section 4 and Chapter 3 Section 5 as an indicator of neoliberalism.. Boas and Gans-Morse note that the term neoliberalism

'... often denotes a radical, far-reaching application of free-market economics unprecedented in speed, scope, or ambition.' (Boas and Gans-Morse 2009:141)

The analysis in Chapter 6 above shows that the specific interests of business were not of great or obvious moment during the parliamentary debates leading to the PA 2008. Table 6.1 ranks 35 topics raised during the House of Commons second-reading debate on the Planning Bill, showing business empathy and orientation ranked equal 28th, with one reference only. It would be simplistic to conclude that this means these concerns were not at play in the genesis of the Act, and it would be to ignore the obvious fact that parliament itself has been a forum in which the representatives of land, capital and labour have historically sought, among other things, advantage for their own party interests (Hayton 2002; Tanner 2002).

This chapter will look at the relationship between business and the legislative body. It will review the developing relationship between parliament and the

various interests involved in promoting major infrastructure in Britain. It will look at the development of specific interest groups and lobbying organisations, and consider the ways in which attempts have been made to influence the path of legislation in this area. The apparent success of these lobbying groups in shaping the changes to planning procedures brought about by the Act will be considered.

A review of the ownership histories of the various classes of infrastructure affected by the Act shows, in many instances, a general move from private enterprise to local government ownership and nationalisation in the late 1940s, then to private ownership in the 1980s and after. The current ownership of nationally significant infrastructure in the UK is considered and the question addressed of whether the mechanisms of ownership can be seen to have influenced the consenting arrangements under the Act.

The impacts of landmark public inquiries for the Sizewell B nuclear power station and Terminal 5 at Heathrow are examined, and the reasons detailed for making changes to the pre-existing planning arrangements for major infrastructure projects. The chapter looks at the way in which business and other interests sought to influence the consenting process for these projects. It seeks to identify the drivers of the 2008 legislation and considers the part played by business and other interest groups in shaping the Act.

9.2 Business Interest and the Legislature

This section looks at the way in which independent groups have been established to represent their particular views and interests both within and outside parliament. It reviews the development of political parties representing particular sections of society and the growth of business and employers' organisations that have sought to influence government policy on matters of concern to their members. It also looks at the range of public-interest and specialist environmental organisations that have followed similar paths in attempting to influence the import of legislation affecting their particular areas of concern.

In the days of the development of turnpikes and canals, interests in land, whether those of owners or tenants, generally held sway in deciding whether proposed developments should proceed. The concerns of industrial capital and urban development came more to the fore with the advent of the railway age and the establishment and growth of water, electricity and gas utilities (Saint 2000:272). The power of landed interests in the House of Lords was curtailed to some extent by the Parliament Act 1911 (Tanner 2002:45), although it took until the end of that century to remove the overwhelming influence of hereditary peers from the second chamber under the terms of the House of Lords Act 1999 (House of Commons 2000). The realisation by trade unionists that their most effective means of persuading parliament to their views was likely to be through establishing representation in the House of Commons led to the founding in 1900 of a Labour representation committee (Matthew 2000:297). This was followed by the founding of the Labour Party and the election in 1906 of its first members of parliament (Harrison and Crossland 1950:384).

With the growth of the trade union movement and the Labour Party, business owners in the industrial and manufacturing sectors became concerned that their interests were not being represented to government in a unified and coherent manner. Three organisations representing various business interests amalgamated in 1965 to become the Confederation of British Industry (CBI) (Beder 2006b:14-16), which has become a major lobbying force for its members interests across many areas of government policy and has, in turn, been seen by government as a legitimate voice of British industry. A CBI publication encapsulated the avowed intent of the organisation in its portmanteau title:

'The CBI is in business to create a climate of opinion in this country in which companies can operate efficiently and profitably for the benefit of all'. (CBI 1992a)

Beder (2006a:14-16) notes the affinity between the organisation and the government at that time: in 1999, the CBI website featured at the top of its homepage a quote from the then prime minister, Tony Blair:

'The government strongly supports business, and we work closely with the CBI as a key representative of business in Britain.'

The CBI claims that its

'... views on all business issues are regularly sought by government at the highest levels'

and that

'No other business organization has such an extensive network of contacts with government ministers, MPs, civil servants, opinion formers and the media.'

According to the UK-based Corporate Watch, few government

'... policies or bills are written without extensive consultation with the CBI. It has daily contact with every level of government, with civil servants, with ministers (including the Prime Minister), and once a bill reaches Westminster with MPs.' (quoted in Beder 2006a:15).

The access and influence of the CBI and the Institute of Directors (an organisation representing business leaders) is summed up by Zetter (2011:33), who suggests that:

'... no Government wants to fall out with the Confederation of British Industry or the Institute of Directors. All of the major parties routinely send their most senior frontbenchers to their conferences, and they are routinely consulted – and listened to – in all aspects of policy that affects industry or commerce.'

The Home Builders Federation (HBF) had long been involved with lobbying on planning matters. In 1981 (as the House Builders Federation), it had lobbied for a review of the 1968 Department of Housing and Local Government Circular on planning conditions, which it felt was not being operated in compliance with the philosophy of the more recent Circular 22/80. The complaints made by the HBF were mostly taken up by the government and the changes included in Circular 1/85. (Dobson 1982, quoted in Thornley 1991:151). The HBF's interest had, unsurprisingly,

always been related to housebuilding and the ability of its members to acquire development land, and its interest in the Planning Bill 2008 was in the proposals for a Community Infrastructure Levy (CIL) rather than in the consenting arrangements for nationally significant infrastructure projects (NSIPs). This is apparent from its written and oral submissions to the Public Bill Committee dealing with the Act (Hansard 2008) and from discussions with the HBF planning director, who noted that

'While the HBF does lobby and comment extensively on planning issues, we were not particularly prominent in the debate regarding NSIP. Very early on in the debate it was made clear that the government didn't favour major residential development in itself as appropriate under NSIP and we accepted that as a position. It was difficult for us to argue that such development was "in the national interest", as we recognised that it was a local decision as to whether to provide for housing in a single, large development (which would use NSIP) or to propose multiple sites around an authority area. As an aside, we were supportive of allowing some residential development alongside NSIP but this was always going to be an ancillary use or "need".' (Private email 17.3.21:Appendix 10.1).

Other groups with special concerns about environmental and development issues but with no overt connections with business have also sought to influence planning issues, albeit generally at a more specific level. The Town and Country Planning Association represented 15 local authorities at the Sizewell B public inquiry and provided a detailed critique of the way in which the inquiry was used by the applicant (the Central Electricity Generating Board) as a means of establishing a future policy for nuclear power generation in the absence of any pre-existing government views. It also provided arguments for the abandonment of a total reliance on cross-examination as the sole means of testing evidence and promoted the use of more co-operative and investigative techniques. While it is not possible to know whether these views were thought to be specifically relevant to arguments for changes in the planning process, they represent two areas in which very substantial change was brought about by the PA 2008. This is lobbying, although decidedly not with the specific interests of business in

mind. Friends of the Earth, the Council for the Protection of Rural England (now CPRE) and other local bodies raised similar questions about the opacity of government and the need for expensive legal assistance in order to take an effective part in the examination of evidence (O’Riordan et al 1988:121, 307, 350, 365).

9.3 Lobbying Organisations and Planning

This section looks at the way in which organisations such as those described in the previous section have attempted to exert influence on legislation deemed likely to impinge on the interest of their members or to affect the particular aspects of society or the environment they are seeking to promote or sustain. It looks at the way in which these organisations have engaged in the parliamentary consultation processes relating to the PA 2008, and especially in what was then the newly established process of evidence-taking by the Public Bill Committee during the passage of the legislation through the House of Commons.

Lobbying is defined as seeking to influence the members of a legislature (OED 2016). It has also been defined as

‘... the process of seeking to shape the public policy agenda in order to influence the Government (and its institutions) and the legislative programme.’ (Zetter 2011:33)

Lobbying organisations abound in the UK, with Demougin et al (2019:354) identifying 447 employers’ organisations (EOs) in the UK involved in the practice to some extent. Data on membership numbers were available for 357 EOs with a total of more than 750,000 employers. The largest were the Federation of Small Businesses (c.195,000 members), the Confederation of British Industry (c.190,000 members) and the British Chamber of Commerce (c.104,000 members).

Three avenues are posited for EOs trying to influence the government: formal lobbying, where the government invites EOs to contribute to the

policymaking process; informal lobbying, seeking access to policymakers; and lobbying at devolved levels, which is not relevant to the PA 2008 since it is a UK government measure, of general application to England and Wales only and almost entirely concerned with non-devolved matters. However, it was noted that

‘... accurate quantitative data on informal lobbying were difficult to identify given that sustaining political relationships depends on informal and private communication, but many interviewees ... discussed the importance of informal approaches.’ (Demougin et al 2019:362)

There has, in fact, been little attempt among academic writers to determine the effectiveness of lobbying. Yackee and Yackee (2006) examined the influence on bureaucracy in the United States of business responses to statutory consultations and concluded that business interests had a disproportionate influence on their outcomes. They tentatively ascribed this to the larger proportion of business responses to the consultation process compared with responses from other interest groups and individuals, but otherwise drew no strong conclusions. There appears to have been no attempt to carry out a similar exercise in the UK. The difficulties of dealing with the recorded processes of consultation for planning applications would be considerable and this exercise would not engage with informal lobbying at a parliamentary level, much of which would be unofficial and unrecorded. It is not possible, therefore, to determine the effectiveness of lobbying in influencing legislation other than by considering the form and content of the final legislation in light of the aims of the lobbying groups involved in trying to influence it.

The views of the CBI appear to have exerted a considerable influence on the changes to the planning system brought about by the PA 2008, in the sense that many of the measures explicitly put forward by that body were included in some form in the Act. In 1992, a joint CBI and Royal Institution of Chartered Surveyors report entitled ‘Shaping the Nation’ suggested a linked national land-use and transportation strategy, together with a statement of long-term objectives (CBI 1992b). The call was for a nationally directed

approach to infrastructure planning inspired by what was deemed to be the superior performance of French systems during the planning of the Channel Tunnel and its associated works. The CBI view, expressed frequently during the next two decades, was that once a national policy was in place, the issues it addressed should not need to be raised again in the planning process. Marshall (2013b:224-225) sets out the continuing pressure for this type of change exerted by the CBI and the responses of the government.

In the 1980s and 1990s, both the CBI and the HBF were active in identifying what they considered to be the shortcomings of the planning system. The lengthy public inquiries into the projected Sizewell B nuclear power station, which ran from July 1982 to January 1985, with the report issued in January 1987 (O’Riordan et al 1988), and the development of Terminal 5 at Heathrow, which ran from May 1995 to March 1999, with the report issued in November 2001 (Pellman 2008), were put forward as examples of the delays and other problems seen by critics such as the CBI as endemic in the planning system. The pressure for change to the system of consent for nationally significant infrastructure was maintained by the Eddington Transport Study (Department for Transport 2006) and the Barker Review of Land Use Planning (HM Treasury 2006), both of which supported the case for radical change. Although there is no conclusive evidence that the efforts of the CBI and other lobbying organisations had an impact on these reports, it is reasonable to suppose that the background of dissatisfaction with arrangements at the time was to some extent informed by the constant adverse criticism that would have been their cultural and intellectual backdrop. Barker’s report followed that of Eddington in calling for NSIPs to be assessed by an independent decision-maker against a framework of settled government policy using time-limited processes and defined assessment criteria – a process delivered by the PA 2008.

The CBI and the HBF both gave evidence to the Public Bill Committee on 8th January 2008, during the passage of the PA 2008 through parliament, and both organisations also provided written evidence to that committee. The organisational processes that led to the formation of these views have not

been uncovered, but it is unlikely that anything expressed in such an exalted forum would be other than agreed corporate policy.

The degree of support afforded to the passage of the Bill is illustrated by the comments made in the first session of the House of Commons committee by John Cridland, then deputy director-general of the CBI, who responded to a question from one MP in the following terms:

'What I can be very sure of is that after 25 years at the CBI, I cannot remember a time when the planning of national infrastructure was such a high level of concern for such a wide range of CBI members. The fact that, of all the Bills before Parliament in this Session, it is this Bill that CBI members in all sectors are saying we must proactively support, to help improve the situation for the benefit of all, speaks for itself.' (HoC 2008a:Col.12, Q18)

In his responses to questions from members of the committee, Cridland gave detailed support to all aspects of the Bill's measures, including the need for National Policy Statements (NPSs) and the establishment of an independent examining and decision-making body in the Infrastructure Planning commission (IPC). This oral evidence supported the written submission made to the committee in which there was specific backing for the conclusions about infrastructure planning reached by Eddington and Barker, as well as a full exposition of the failings, as seen by the CBI, of the planning system at the time and its effects on the business community.

The CBI also contended in its written submission that planning applications were often delayed or frustrated by a failure to receive timely responses from statutory agencies because of a lack of appropriate resources. It noted that:

'The difficulties facing scheme promoters are compellingly detailed in the respective independent reviews of UK transport policy and land use planning undertaken by Sir Rod Eddington and Kate Barker.' (HoC 2008b:PB 23).

It specifically detailed lack of clarity over government strategic policies and priorities, the complex and overlapping array of consent regimes, lengthy

and open-ended inquiry processes, multiple ministerial accountabilities following an inquiry inspector's report, and the risk of legal challenge on the merits of strategic policy statements and the process by which a decision was made on any given project. These were all matters raised by the CBI in its comments on the planning process in previous years.

The questioning of John Slaughter, director of external affairs for the HBF, and his associates was generally restricted to matters relating to the CIL proposals contained in the Bill. However, in his opening remarks to the committee, he said:

'On behalf of the Home Builders Federation, we want at a high level to welcome the Bill, which we think is helpful in a broad sense for the major housing issues that we face as a country, to both increase supply and, funding from our perspective, meet the extremely challenging objective of building to a zero-carbon standard from 2016 onwards. The general objectives of the Bill are helpful in that respect, and we support the objective of improving the speed, efficiency and effectiveness of decision-making on national infrastructure because that will be broadly helpful with regard to spatial planning in achieving housing objectives as well.' (HoC 2008b:Col.73)

Again, these comments echoed the views expressed in general terms in the HBF's written submission to the committee and by the organisation over the preceding years. It specifically welcomed:

'... proposals to speed up the decision-making process on major infrastructure projects through the provision of clear, unambiguous National Policy Statements and the establishment of the proposed new Infrastructure Planning Commission to process applications for major infrastructure projects.' (HoC 2008b:PB 22)

In addition, it suggested that it would be:

'... vital to ensure that the National Policy Statements are subject to appropriately extensive but sensibly managed consultation with all interested parties and due parliamentary scrutiny, and that the

Commission should be adequately resourced and able to attract suitably experienced and qualified members.’ (Ibid)

This review of lobbying by special-interest groups concerning the planning regime makes it apparent that, during the period in which a decision to bring forward a new planning bill was arrived at and during which the terms of that bill were being drafted, the interests of business in this regard had been actively drawn to the attention of the government. The alignment of the arguments of business lobby groups with the findings of the Eddington and Barker reports, and the inclusion in large measure of their recommendations with regard to the consenting of NSIPs under the PA 2008, can be seen as a success for the lobbying process. On this basis, it could be said that the Act was from its inception specifically inclined towards the interests of business, just as it has earlier been argued that the whole parliamentary process is favourably disposed towards business and furthering the interests of business.

On the other hand, some of the same changes to the consenting process were also proposed by other lobbying groups not obviously associated with business interests. During the Sizewell B inquiry, the Town and Country Planning Association, which represented a consortium of 15 local authorities, Friends of the Earth (FoE) and the Council for the Preservation of Rural England (CPRE) all submitted objections and were represented. Each organisation had also been represented at earlier major inquiries at Windscale (1977), the Belvoir coal mine (1979) and Stansted Airport (1981-83), and had made their dissatisfaction with the inquiry system for major projects abundantly clear (O’Riordan et al 1988:50, 352-372 and elsewhere). FoE and the CPRE also provided written and oral evidence to the Public Bill Committee dealing with the passage through parliament of the Planning Bill. Although most of their concerns were about funding for objectors and the maintenance of democratic controls over the planning process, they were also concerned about the inappropriateness of the adversarial approach to the examination of evidence before inquiries. They were also in favour of the concept of NPSs as proposed under the Bill.

The government consultation document 'Major Infrastructure Projects: delivering a fundamental change' (DTLGR 2001a) and the Planning Green Paper 'Planning – Delivering a fundamental change' (DTLGR 2001b) drew a response from a consortium of 13 bodies concerned with environmental, animal welfare and other public-interest issues (Private email 31.3.21: Appendix 10.2). The consortium was in favour of a coherent national framework for decisions on major infrastructure projects within a national spatial policy and supported the use of NPSs, as well as the use of a detailed inquiry process to deal with site-specific issues. However, it foresaw difficulties with the parliamentary procedures suggested in the government's proposals. The document included a list of goals the organisations felt should be achieved by changes to the planning system for major infrastructure projects:

- *'aim to secure high quality public participation in a less adversarial way;*
- *take an approach based on hearings and fact-finding discussion, with Inspectors taking a more inquisitorial role;*
- *make greater use of round-table discussions to help resolve issues;*
- *ensure full access to background information (e.g. research work) for all interested parties;*
- *set and enforce strict deadlines for submission of evidence and information;*
- *adhere to pre-arranged timetables, with penalties for abuse by participants;*
- *eliminate, as far as possible, time-wasting practices such as reading out proofs of evidence (written evidence should hold equal weight to oral);*
- *make greater use of pre-inquiry discussions – focus on the real 'contested issues';*
- *use planning advocacy services to their full potential to encourage, inform and co-ordinate input from the public;*

- *hold sessions at different times (including evenings and weekends) to increase access and openness; and*
- *consider funding NGOs and other public interest groups to enable them to participate on equal terms with other parties.'*

Almost all of these objectives were achieved by the procedures introduced by the PA 2008, albeit that the funding of NGOs and other public interest groups was not included in the legislation. To this extent, the lobbying efforts of these organisations can be viewed as effective and successful.

It is apparent that lobbying for planning reform was widespread and employed by a wide variety of organisations, some with a commercial interest to support and enhance, and some with environmental, conservation and other public-interest aims. The legislation as finally enacted addressed concerns expressed by each of these parties and cannot be said to be solely the result of lobbying from business and commercial interests.

9.4 Infrastructure Ownership

This section looks at the changing history of the ownership arrangements for infrastructure whose future development will be affected by the PA 2008. It reviews the origins of the current varied ownership models and considers how the type of ownership impinges on the operation of the PA 2008. It illustrates that the form of ownership of the infrastructure asset is not a relevant factor in the operation of the Act.

It is not apparent that an affinity for the interests of business has been translated into the wording of the Act itself. There is nothing in its 242 clauses or 13 schedules to identify what nature of enterprise or species of ownership was anticipated among the types of infrastructure projects identified as being of national significance. The PA 2008, in fact, makes no mention of ownership, and so it follows that the Act is intended to apply to all such projects, and that the nature of the ownership is not relevant to its

classification under the terms of the Act. NSIPs are defined by type, location and size or capacity, not by ownership.

The ownership of the organisations operating the classes of infrastructure covered by the Act has varied over time. Many were established as privately owned or public companies and have been subject to the vagaries of a changing backdrop for commercial enterprises and developing technology over many decades, and centuries in some cases. Most have been taken into public ownership at some stage, generally in the nationalisation measures introduced after the Second World War, but some in earlier times, as a result of a desire to rationalise particular industries, others with a view to improving efficiency and promoting the use of new technologies. Many have been returned to the private sector since the 1980s under the privatisation initiatives undertaken by the Thatcher government and its successors.

The privatisation of the British energy industries began in 1986 with the Gas Act, with the assets of the nationalised British Gas Corporation transferred to British Gas plc, which was then floated on the London stock exchange. In 1997, the company was split into three separate companies dealing with bulk gas supply, distribution and domestic supply. The Electricity Act 1989 set the electricity industry on a similar path. The nationalised Central Electricity Generation Board, which was responsible for the generation and distribution of electricity, was privatised and split into three separate publicly owned companies, with provision made for the maintenance of the continuing nuclear element of power generation. These companies and their successors, many now owned by European state-owned enterprises, are responsible for seven of the elements included of the list of NSIPs set out in Section 14(1) (a) to (q) of the PA 2008 (House of Commons 2014).

Each public utility is regulated by a public body appointed by the government. The need for infrastructure projects is identified by the industry itself but the investment required has to be justified to, and approved by, a government-appointed regulating organisation. The government has no direct influence over what infrastructure schemes are brought forward by the

industries, but regulators have an obligation to ensure that sufficient resources are invested to ensure continuity of supply (Ofwat 2022; Ofgem 2022).

While it will be entirely possible to widen the type and size of infrastructure subject to the provisions of the PA 2008, no specific schemes are detailed in the Act or its secondary legislation other than the third runway at Heathrow and the Thames Tideway Tunnel. The government is involved in determining what infrastructure should be built, but the means it uses to do this do not feature as part of the consenting system, and no parts of the PA 2008 would allow it to use the Act for this purpose.

Currently, the larger proportion of the types of NSIPs listed in Section 14 of the PA 2008 as amended would be brought forward by organisations owned either privately or by public companies. As noted previously, seven of these are successor bodies to nationalised energy companies. Airport-related developments would be likely to be pursued by the successor companies to the former British Airports Authority, which had been established to operate the four largest British airports and was privatised by the Airports Act 1986. Large rail freight interchanges, to be consented under the Act, would probably be brought forward by land developers and logistics organisations from the private sector. The construction or alteration of dams, reservoirs or waste-water treatment plants, and developments relating to the transfer of water resources, would be undertaken by the successors to the Regional Water Authorities (RWAs) privatised under the Water Act 1989. These private bodies acquired the assets of the RWAs and are now mainly owned by private equity companies, although one is run as a 'not for profit' organisation. The construction or alteration of hazardous-waste facilities has developed from what was once a rubbish-disposal function operated by local authorities into a technologically advanced industry run by privately owned specialist contractors.

The exceptions to this pattern of private ownership are in the fields of highways-related developments, the construction or alteration of harbour facilities, the construction or alteration of railways, and developments relating

to radioactive waste geological disposal sites. The current arrangements for each of these are described below.

Section 22 of the Act defines those highway construction, alteration or improvement projects falling within its purview as being only those proposed on roads for which the secretary of state is the highway authority. This designation is contained in Section 1 of the Highways Act 1980, which assigns this role to the secretary of state in the case of motorways and trunk roads only. Improvement of these roads in England is funded directly by the government through a publicly owned 'arms-length' company, National Highways. This body was established in 1994 as the Highways Agency, an executive agency of the Department for Transport, becoming a government-owned company in 2015, when it was renamed Highways England, and then National Highways in August 2021. It is intended to operate as a private enterprise while remaining under the strategic control of the government. Since 2015, the Office for Rail and Road (ORR), a non-ministerial government department, has been responsible for monitoring the performance and efficiency of National Highways. It monitors compliance with the terms of the Road Investment Strategy and Licence under which National Highways operates, and advises the Secretary of State for Transport on funding levels. Thus the government has an indirect means of controlling road infrastructure developments, through an independent regulator influencing investment by an arms-length government company but funded by the government itself through budgets set for the Department for Transport. As in the case with all government owned companies and executive agencies, the relevant secretary of state – for transport in the case of National Highways – is ultimately responsible to parliament for its operation (ORR 2017).

Section 24 of the Act defines the construction or alteration of harbour facilities that fall within the purview of the Act in terms of the quantity of materials to be handled by the facility when constructed. The ownership of ports is varied, with private, local authority and trust models, depending on the history of the port rather than its capacity. In England, 26 ports are

privately owned and operated, including many of the largest and busiest. These range from ports owned by international groups to ports owned by private companies. The government has no ownership interest in any of the ports in this sector, all investment being commercially financed. Trust ports account for 48 ports in England, with seven of these sufficiently large to be defined as major trust ports and for the conduct of the trust to fall within the ambit of the Ports Act 1991. Of these, four are major trust ports whose national strategic importance is such that the Secretary of State for Transport retains the power to appoint the chairman or chairwoman and non-executive board members. Apart from this constraint, trusts ports are independent statutory bodies that cannot be owned by other companies or shareholders. Each is governed by its own unique statutes and controlled by a local independent board. There are no shareholders or owners, and they operate on a fully commercial basis, accountable to their stakeholders and users. Local authorities own 45 ports in England (DfT 2006). These vary in size, but all operate on a fully commercial and competitive basis within the constraints of local government legislation (UK Major Ports Group 2021; Jackson 1983).

The nature of the construction or alteration of a railway to be governed by the Act in England is defined in Section 25: it must be part of a network operated by an approved operator, be longer than 2km, and not already benefit from a planning consent. The history of the railway industry serves further to illustrate the point that the PA 2008 is not concerned with the ownership of the organisations involved in promoting NSIPs. The privately owned British railway companies were nationalised under the terms of the Transport Act 1947 before moving back into private ownership through a series of measures, starting with the Railways Act 1993. When railway infrastructure was privatised, the fixed assets, such as the permanent way, signalling systems, stations and offices, were transferred to Railtrack, a public company listed on the London stock exchange. For reasons involving poor financial performance and a failure adequately to invest in essential maintenance, Railtrack was placed in administration in 2001 under the terms of the Railway Act 1993, and in 2002 its assets were acquired by Network

Rail. In England, all permanent way and other fixed railway assets are owned and operated by Network Rail. This arm's-length public body within the Department of Transport operates on the same basis as does National Highways in respect of motorways and trunk roads, and with the same parliamentary responsibilities lying with the secretary of state (House of Commons 2004). The ORR has been responsible since 2004 (initially as the Office for Rail Regulation) for the setting Network Rail's outputs and funding requirements. Funding is sourced from a combination of train operating companies and the government, through the Department for Transport. The need for new or enhanced infrastructure is determined internally by network Rail, with the regulator approving new investment. Again, the government has indirect control of rail infrastructure developments, through an independent regulator influencing investment by an arms-length government company but funded directly or indirectly by the government itself through the Department for Transport budget (ORR 2017).

Developments relating to geological disposal facilities for radioactive waste were added to the Section 14 listing of NSIPs by the Infrastructure Planning (Radioactive Waste Geological Disposal Facilities) Order 2015. This also added Section 30A to the Act, providing a definition of the disposal facilities covered by the Act. However, this order does not define the bodies entitled to apply for consent for such developments, and there is no clarification of this point in the relevant NPS (DBEIS 2019). This implies that private-sector organisations with the necessary abilities or, possibly, organisations owned by foreign governments with expertise in this field, would be able to bid for the opportunity to undertake the construction and management of such a facility.

It is apparent that the government is intent on continuing to exercise some control over the projects promoted for consent under the Act. The incentives or otherwise for these projects are managed by a variety of government-operated mechanisms, either through government-appointed regulators or through price negotiations. While the approaches to regulation vary considerably, with requirements to provide defined levels of service in some

cases (airports, electricity generation, water supply), the means of meeting these obligations is a matter for the individual promoter, usually in consultation with the government regulator. In the case of electricity generation, government involvement in agreeing supply prices determines which schemes proceed. Examples include the case of the Swansea Barrage electricity-generation scheme, where the government withdrew support on grounds of cost (Hansard 2018g) despite the project having been granted a development consent order in 2015 (PINS 2015), and the proposed Sizewell C nuclear power station, where a regulated asset base model of financing is to be used, with government money to encourage other investors to provide finance (DBEIS 2022).

The government approach to regulation could be seen as part of a roll-back process of reintroducing regulation to industries that were once nationalised but are now largely in private or quasi-private ownership. This system does not, however, impinge on the operation of the PA 2008: there is no frame of reference that includes both the operation of the Act and the economic or political opportunities and constraints that shape investment decisions made by infrastructure developers.

It is the case that all of the undertakings addressed by the Act have been the subject of privatisation either during or immediately after the Thatcher era apart from those only recently developed, such as the transfer of water resources and the geological storage of radioactive waste. It may be that this privatisation initiative was the result of the acceptance and implementation of neoliberal practice with regard to public ownership, but that is not pertinent to the present discussion. It is apparent in all these cases that the ownership of the facility subject to the consenting arrangements under the PA 2008 is not a matter addressed by the Act, whether in the body of the legislation, the NPSs made under it, or the secondary legislation supporting its operation. The Act can be applied equally well to proposed infrastructure owned by commercial or public enterprise. It is not possible to conclude that the Act contains any measures that are intended to be specifically supportive of business and commercial interests. On this basis, it could be concluded that

the Act is intended to accommodate the consenting of infrastructure operating under any existing or possible future mode of ownership. The Act is, of course, intended to be supportive of infrastructure development, in that it provides a more certain path for scheme promoters to obtain consent. It does this by setting out in the Act exactly how the process is to operate; in the NPSs, the material that is to be considered in each application; and what procedural requirements are to be observed.

9.5 Landmark Inquiries

This section looks at some aspects of the Sizewell B and Heathrow Terminal 5 planning inquiries. These are seen as the ‘landmark’ inquiries and are generally considered to have been instrumental in promoting changes in the consenting arrangements for major infrastructure projects. It examines the views of some of the parties represented at the inquiries in terms of the policy and design preparation. It demonstrates that the pressure for change to the planning process for major infrastructure works came not only from business interests but from a wider range of players, with no alignment of motives, interests or concerns.

In view of the lobbying of the CBI and others, the framing of the Act might be thought of as representing a neoliberal approach. Certainly, the press for deregulation and simplification of the processes of the planning regime espoused by the CBI can be viewed in this light. The two ‘causes célèbres’ used in most discussions of the need for change do not, however, entirely follow the narrative of a dysfunctional or inappropriate planning system, despite being represented as such by some of the participants in the debate (Hardy 1991:154-165).

The main criticisms of the planning process arising from these two inquiries coalesced around a number of specific elements, some common to both inquiries. Lack of clear government policy on relevant issues was a common factor, although Sizewell was considered by some to be an exercise in deciding what government policy should be (O’Riordan et al 1988:126).

Although it is unrealistic to expect that any major scheme for which planning consent is sought will be fully designed, the lack of an adequately prepared and deliverable scheme at the time of the application was of significance for Terminal 5. Among other substantial changes made to the design during the course of the inquiry, problems with the maintenance of flows in diverted river channels were only identified after the inquiry hearings had been completed, during the time in which the inspector's report was being prepared. The solution to the newly discovered difficulties required a major redesign effort (Pellman 2008).

The use of cross-examination rather than an investigative approach was seen as an ineffective method of interrogating the evidence provided to the inquiry on two grounds. First, the system was designed to find a winner and a loser, rather than to discover the truth of what the evidence meant, and second, the system required the use of professional lawyers to present, argue and defend a case, so that unfunded participants in the process, whether objectors or public-interest pressure groups, were unable adequately to interrogate the applicant's case. A linked problem related to the funding of objectors, who were faced with the costs of professional representation and expert witnesses. Many were unwilling or unable to meet these costs and felt that they could not make their cases adequately as a result. These strictures applied not only to individuals and pressure groups but to local authorities, many of whose finances were so limited as to make representation at the inquiries impracticable (O'Riordan et al 1988:268).

The time taken by the two inquiries was both substantial and 'at large', in the sense that there was no definition of, or constraint on, how long the process should last. Equally, there was no defined time within which the relevant secretary of state was legally or administratively required to come to a decision on the recommendations of the inspector.

As was the case with all planning inquiries up to that point, there was no extensive formal definition of what issues should be addressed in the applicant's submission beyond those defined in compulsory land acquisition procedures. In the case of the Sizewell B inquiry, the minister, responding to

a question on the floor of the House of Commons seeking information about its terms of reference, enumerated a number of points that appeared to him to be relevant. These were considered to be 'unusually wide, and surprisingly vague' and did not constitute terms of reference under the inquiry rules pertaining at that time (O'Riordan et al 1988:4). In the case of Terminal 5, the inquiry proceeded on a topic basis as set out by the inspector and agreed by the participants (Pellman 2008:7).

On 2nd July 2002, the House of Commons select committee on procedure heard evidence from the Campaign for the Protection of Rural England (CPRE), Friends of the Earth (FoE), the National Trust (NT) and Transport 2000 on proposed new parliamentary procedures to deal with major infrastructure projects (House of Commons 2002). The CPRE submitted a paper identifying the deficiencies of the planning process exemplified by the Terminal 5 inquiry, the second Appendix of which addressed the specific causes, as the organisation saw them, for the length of the inquiry. These were:

policy vacuum - the T5 arguments were heard in a policy vacuum and the inquiry was effectively making up aviation policy 'on the hoof';

lack of credible data - the applicant refused to present credible basic data for future passenger and flight numbers, and refused to cooperate with the inspector's request that it reach agreement with objectors over future forecasts;

length of process - the entire first year of the inquiry was taken with by the presentation of the applicant's case. Complaints about the length of the process only began when this case came under scrutiny;

last-minute changes to evidence - particularly as a result of late changes to the design;

inadequate planning application - lacking an appropriate public transport package; and

the time taken by the government to consider the inspector's report - 11 months from submission to the decision by the secretary of state.

These criticisms are substantially the same as those made by commercially based lobbying organisations and this tends to lead towards the conclusion that the changes proposed by all those who sought to influence the direction of infrastructure planning reform were essentially seeking to improve the efficiency of the planning function. All parties sought change and improvement in terms of the time taken and the decision-making process, and certainty in the sense that applicants should be aware of what information is required to be submitted and how the inquiry is to be handled. All parties had their own particular agendas in pursuing these issues, be it business efficiency or environmental protection, but all agreed that change was needed to make these aspects of the planning process better able to meet the needs of a modern society. While the motives of the CBI might arguably be thought neoliberal, those of the environmental and public-interest groups involved are very unlikely to have been so. The changes brought about by the Act cannot then be characterised as overtly neoliberal purely on the basis of the lobbying efforts of these bodies in the period before its enactment.

9.6 The Reasons for Change

While the difficult and time-consuming natures of the Sizewell B and Terminal 5 inquiries were quite sufficient to convince many parties that there was a need for substantial change to the consenting process for major infrastructure projects, there were, possibly, other considerations at play in addition to those of an understandable desire to improve the efficiency of the process for its own sake.

The eight-year period between the submission of the application to construct Heathrow Terminal 5 and the decision to approve that construction was seen in many quarters as an unwarranted delay, and an example of the deficiencies of the planning system for major infrastructure projects. However, it is possible that senior civil servants were not unhappy at the difficulties that the inquiry had experienced, as discussed in Chapter 10. It

illuminated obvious failings in the planning process and provided an impetus to change the system then in place for major projects that was unsuitable for the expected surge in applications for planning consent for schemes in the UK which would be generated by the Trans-European Transport Network (TEN-T) initiative.

This initiative was a planned network of roads, railways, airports and water infrastructure in the European Union, to be part of a wider system of trans-European networks, including a telecommunications network and an energy network. The first plans for it were produced by the European Commission in 1990, with guidelines formally adopted in 1996 by means of Decision No. 1692/96/EC of the European Parliament and of the Council on community guidelines for the development of the trans-European transport network (European Parliament 1996). TEN-T schemes in the UK were to form part of a North Sea-Mediterranean multi-modal transport corridor that had been identified as one of the ten priority axes of the TEN-T. This corridor would extend from Edinburgh and Dublin to the English Channel and the North Sea ports, then connect to the Low Countries through the Mass, Rhine, Scheldt, and Rhone river basins, through Paris and on to Marseilles.

Obviously, this initiative would require major road and rail improvement schemes to be undertaken across many areas of the UK. The additional schemes in the UK, both new and upgraded, would require numerous major planning inquiries and it was feared that without a more clearly defined administrative process, one that was able to depend on predetermined government policies, these could not be guaranteed to allow schemes to be delivered in accordance with an agreed timetable. The perceived deficiencies of the Terminal 5 inquiry would, according to this analysis, allow pressure to be brought on the appropriate politicians to make changes to the planning system, to improve certainty for applicants and reduce the time taken by the inquiry process. The weaponisation of the Terminal 5 inquiry in an effort to bring about change in the planning system was recognised both by objectors to the development and commentators on the decision. A FoE spokesman said that

'... what the government is seeking to do is to reform planning on the back of Terminal 5. They are taking the business agenda hook, line and sinker.' (Ellis quoted in Planning November 2001).

An academic commentator opined that

'... the sins of the decision process will colour the nation's view of the planning system as a whole – or so the government hopes.' (MacDonald 2001).

While these considerations may provide one explanation for the genesis of the changes brought about by the PA 2008, they do nothing in themselves to provide illumination about the market orientation of the Act. It might be argued in some circles that because the European Union itself can be considered to be a neoliberal construct (Hermann 2007; Fougère et al 2017; Gill 1998), then measures to assist in the more efficient and timely delivery of its programmes represent positive support for neoliberal measures. Arguments that the philosophical background for the need for improved infrastructure are irrelevant, since the need for an efficient and well-understood planning process is obvious can founder in a Gramscian interpretation of the ways in which 'common sense' comes to be accepted as such (Hall 1986:40-42). It is not intended here to delve into the intricacies of cultural hegemony or arguments about disciplinary neoliberalism in Europe: sufficient to acknowledge that the need to make preparations for European-inspired and financed infrastructure projects could well be thought to have provided a neoliberal tinge to changes in the planning system.

9.7 Conclusions

It has been argued that

'... the scope and purpose of planning has undergone a major shift since 1979. During the post-war period planning was fulfilling three different purposes, though often in a confused or veiled fashion. These purposes covered the promotion of economic efficiency, the protection of the

environment and the fulfilment of community needs. Since 1979 the first of these has become paramount, the second important only in specified geographical areas and the third no longer seen as the remit of planning.' (Thornley 1993:219)

Efforts to change the way in which NSIPs are consented could be regarded as the promotion of economic efficiency, thus displaying a bias towards the business agenda. However, criticism of the pre-2008 consenting system came not only from business-orientated lobby groups but also from a variety of non-commercial pressure groups with interests in the environment and countryside matters, as well as in the protection of a coherent and effective town and country planning system (Hardy 1991:196-214).

The planning inquiries for Sizewell B and Heathrow Terminal 5 were not typical of planning inquiries in general, but served to bring home the need for a more structured approach to the consenting arrangements for large schemes. The government produced a consultation document in December 2001 arguing that

'...present procedures were lengthy, unwieldy and expensive for all concerned' (DTLR 2001a)

and both the House of Commons Procedure Committee (HoC 2002a) and the Select Committee for Transport, Local Government and the Regions (HoC 2002b) held hearings and took evidence on the changes proposed by the government. The criticisms of the Sizewell B and Terminal 5 inquiries were put to these committees directly in written submissions and oral evidence session by the lobbying and pressure groups for business, environmental and public interests, and their concerns were accommodated to a very large part in the PA 2008.

The pressure for the changes brought about by the Act improved the efficiency of the consenting process for NSIPs by providing certainty in submission requirements and programming. On this basis, it can be thought of as business-friendly and so would fit into a broad definition of a neoliberal advance. However, the desire for efficiency and certainty in public procedures is not the sole preserve of neoliberal ambitions: it is also

characteristic of a more general desire for an effective and responsive public administration.

There is no evidence of an overt predisposition on the part of legislators to support business interests at the expense of other considerations. The analysis of the parliamentary debates given in Chapter 6, Table 6.1, shows that there was little direct reference to business in those forums, although a general background of support for business can be adduced from the generally expressed desire of members of parliament to see employment opportunities flourish in their own constituencies. It can be concluded that there is nothing to support an assertion that the Act is neoliberal in its intent on the basis of the business empathy and orientation enshrined within it. This conclusion, albeit limited to only one of the attributes of neoliberalism under examination, is at odds with the views of many of the academic commentators on the PA 2008 referenced in the literature review. However, what is not accounted for here is the normative nature of support for business interests among the legislators. As has been noted previously, parliament is a body with its origins in the land-owning classes, expanded to include those with business and industrial interests, both as employers and workers, all with an interest in supporting that sector for profit or wages. It might well be assumed that business empathy and orientation were normative attitudes among members of both houses of parliament during the debates on the 2008 Planning Act.

Chapter 10 **Insights from Makers, Users and Commentators**

10.1 Introduction

The reasons for conducting interviews as part of this research have been described in full in an earlier chapter. Briefly, it was hoped to gain insights from those actually involved in the gestation of the Planning Act 2008 (the Act, PA 2008), its enactment, its use in practice, and its review by academics. It was hoped to interview politicians and others who had been involved in establishing the Act, practitioners who had used it, and the academics who had written about it. The reasoning for this approach and the methodology used is set out in Section 4.9 above.

In all seven interviews were arranged with the reasons for each selection given below:

Dame Kate Barker. Her report (Barker 2006) provided one of the main drivers for the Act. She was seen as representative of those who had been formative in the Act's genesis.

Sir John Armitt. As Chairman of the National Infrastructure Commission (NIC) he was involved with the identification of nationally significant infrastructure projects (NSIPs) for future promotion and was thought likely to have pertinent views on the Act.

Prof. Phillip Allmendinger, Dr. Ben Clifford, Prof. Tim Marshall, Prof. Janice Morphet, and Prof. Mark Tewdwr-Jones. All these are distinguished academics who have written extensively on planning matters and have, to a greater or lesser extent, made comment on the nature and effects of the PA 2008 (Allmendinger 2016, 2001; Marshall 2021, 2013b; Morphet and Clifford 2017; Tewdwr-Jones 2002).

A number of those with whom interviews were sought failed to respond to the approach or declined the invitation. Unfortunately the former included the

politicians who led the House of Commons debates on the original Planning Bill (Hazel Blears and Eric (now Lord) Pickles) although their contemporary views are recorded in the parliamentary record (Hansard 2009, 2008a,b and c) and referenced in Chapter 6 above which details the passage of the Bill to enactment.

The failure to achieve the engagement in the interview process of politicians who had been involved in the enactment of the PA 2008 obviously meant that it was not possible to interrogate their assessment of the possible neoliberal intent and content of the Act, as was the original intention. It meant that it was not possible to contrast their understanding and appreciation of neoliberalism in the legislation with that of either the academics who had written about the Act or the other interviewees who had some knowledge of it. One of the main purposes of including interviews in the design of the research was thus frustrated, although the reticence of this group of potential interviewees did not become apparent until after the interview programme was in train. The absence of politicians from the range of interviewees meant that the contribution to the exploration of the research question that could be provided was more limited than had been hoped. However, the interviews provided a number of insights which proved valuable to the investigation, although the material obtained provided little additional information about the legislative process.

Each interviewee was asked if material from the intended interview could be used and attributed in this work. Each of them agreed during the interviews that their comments could be used without the need for anonymisation.

10.2 Interviews

10.2.1 Themes

As noted previously, the objective of the interviews was frustrated by the failure to gain access to the politicians involved in the genesis of the Act. However, a number of interesting themes were identified from the interviews that were obtained. These were: a lack of awareness of the description of

the Act as neoliberal among the 'non-academics'; a softening of the view among academics that the Act was a neoliberal measure as a result of the 2011 Localism Act amendments; and a particular view about why the PA 2008 was seen as a necessary change to the planning system for NSIPs.

The interviews fell into two distinct categories: academics and non-academics. In this context the academics were those who have written on the subjects of planning and neoliberalism: Almendinger, Clifford, Marshall, Morphet, and Tewdwr-Jones. The 'non-academics', Barker and Armitt, were involved dealing with the conception of the Act in the former case and its use in the latter.

The interviews with Armitt and Barker indicated that they had not connected the term 'neoliberal' with the Act until it was raised during their interviews. They were unaware of the general ascription of neoliberalism to the Act by academics, and this was a matter of surprise to Barker and of no concern to Armitt. This lack of awareness of the 'neoliberal label' was perhaps a result of the general lack of commentary provided on the Act by academic and popular writers on planning matters as discussed in Section 1.4 and elsewhere. They saw the Act as providing a practical means of consenting NSIPs, although they both thought that there was a sense of the inevitable in the early replacement of the Infrastructure Planning Commission (IPC) as decision-taker by an elected politician.

The interviews with academics yielded little that differed substantially from their published views. There was a softening of opinions that the Act was neoliberal in intent, this resulting from the changes brought about by the Localism Act 2011 to abolish the IPC. It was noted in Section 7.6 that this act removed at a stroke one of the main objections to the PA 2008 during its parliamentary passage, nullifying the introduction of unelected and apparently unaccountable 'experts' into what previously had been the function of an elected politician answerable to parliament. The origins of the Act were the subject of some speculation, but no evidence was available to make a definitive view possible on the matter.

The interviews also evoked more general reflections on the widespread public acceptance of traits of economic and political thought that could be thought of as neoliberal in character. Were these the canvas against which the PA 2008 had come into existence? How had these traits come to be accepted as normal and acceptable by parliamentarians and more widely? The more general learning points from the interview process are discussed in Section 10.4 below.

10.2.2 A Neoliberal Measure?

Armitt had not heard the term 'neoliberal' used either in connection with the Act itself or with infrastructure development in general, He did not recognise the term 'neoliberal' other than in the broadest sense of implying

'...right wing political thinking as opposed to leftwing political thinking.'

although during the interview it was obvious that he was aware of a general description of the term as support for business, possibly at the expense of local democratic processes.

Armitt's remit as chairman of the NIC (inaugurated in 2015 and established as an executive agency of HM Treasury in 2017) had specifically excluded investigation into the consenting process because the Act was considered to be working satisfactorily. He saw the Act as an attempt to reduce the time taken to deliver major infrastructure schemes but felt it had failed in this: schemes still took about fourteen years from conception to completion, albeit the time taken by the consenting process itself had decreased as preparation time had increased.

Armitt's approach was that of a 'simple engineer': someone who had been given a job to do and the tools with which to do it. If these were not perfect he would still use them as best he could and was untroubled by the labels others may put on them, neoliberal or otherwise. He saw the benefits of the abolition of the IPC as acceding to the reality that politics will always be at play in the provision of major infrastructure projects.

In the nearly two decades since her report Barker has moved into other areas of work and had not been concerned with the impact of the PA 2008,

although maintaining a general interest in the topic. She had not read any of the academic criticism of the Act and was uninclined to agree that it was a neoliberal measure. When Barker was asked if she considered that there was a connection between the Act and neoliberalism she said that the possibility of such a connection had not occurred to her until the issue was raised during the interview.

'I certainly didn't think of it, to be frank, as a neoliberal measure...I think of neoliberal as being much more market driven....people say that it put much more weight on the economics of the decisions rather than on other things such as people's quality of life or the environment: I would resist that (view)....'

She thought that the Act might be considered neoliberal in the sense that it could be thought to put commercial interests ahead of local and environmental concerns. She saw it as a centralising measure although not neoliberal: the promotion of national requirements would always be a matter for central government.

Morphet saw the Act largely through the prism of her work for the National Infrastructure Planning Association (NIPA) (Morphet and Clifford 2017). She had strong views about the genesis of the Act and saw the influence of the civil service promoting European Union needs and priorities as a main driver in this. Her views on the way in which the Terminal 5 inquiry was conducted touch on the realm of conspiracy theories, with references to the machinations of treasury officials. She saw the Act as being democratic owing to the involvement of local authorities in the process, and allowed that schemes of national importance should be consented at national level on grounds of subsidiarity. She did not consider the Act to be neoliberal in intent as it does not consider the interests of capital to outweigh the needs of society: she asserted, rather, that a change of balance had been brought about by the Thatcherite privatisations of the 1980s which were themselves brought about by pressures from the European Union. In this she was something of an outlier from the other academics interviewed in that she did

not detect neoliberalism in the Act apart from that involved through its apparent purpose in facilitating European Union initiatives.

Clifford did not see the Act as a neoliberal measure, although he generally saw the concept of neoliberalism to be a useful model in understanding developments in planning legislation and in society in general. He considered the Act to be more of a New Labour, 'Third Way' measure of modernisation, placed in a neoliberal environment, and representing a shift in societal governance within the context of a late capitalist or neoliberal era. He

'...saw the Planning Act as an exercise in trying to modernise and improve delivery of nationally significant infrastructure, so trying to bring together the disparate processes of the Electricity Act, things that had gone through the Transport and Works Act...trying to bring them together in a process that had some certainty around the process of examination and timescale.'

The characterisation of the Act as neoliberal was, he suggested, mainly because it deleted discussion of the principles of a development from the process at the same time as removing its operation from local authority control. In this he was somewhat at odds with Allmendinger and Marshall whose concerns about neoliberalism were more focussed on the democratic 'deficit' of the IPC process, rather than the removal of the consenting process from local control. Clifford's approach was perhaps more measured than theirs, and he accepted that his concerns were, perhaps, misplaced since applications for major infrastructure consents have been 'called in' by the secretary of state as a matter of course under Town and Country Planning Act (TACP) procedures. In any event, local authorities are given the opportunity to play a major role in the PA 2008 procedure, albeit they were not now able to oppose a development on a matter of principle as these are enshrined in a relevant National Policy Statement (NPS). Clifford thought that the change from an adversarial to an inquisitorial and time limited process was generally welcomed. The fact that some schemes had been refused and some heavily modified indicated that the system was

working properly and had in general been successful. On being asked if he considered the Act to have been a success his response was:

'A success? Yes, largely..... it's doing what it's supposed to do.'

Allmendinger was explicit that he thought that the neoliberal impact of the Act had been largely mitigated by the abolition of the IPC. His view of the PA 2008 was that, as enacted, it had the characteristics of a neoliberal measure in that it removed the decision-making process from the democratic realm to that of unelected functionaries. He felt that this had to some extent been mitigated by the use of NPSs resulting from a parliamentary process and by the reinstatement of secretary of state as the decision-maker.

Marshall considered that while planning had been neoliberalised since 1979, giving more power to the market. In his 2013 book he had commented that

'It will be the implementation of the model invented in 2008 which will be the test of real practice, as against the intentions (which were, as I will explain, well characterised as neoliberal and far from extending democracy).' (Marshall 2013b 45)

He had not provided the promised explanation for his assertion, but he now felt that the Act was not an entirely neoliberal measure. He recognised that there was a need for balance between local and national interests but felt that the Act moved this too far in favour of the latter. He saw this in terms of the removal of local authorities from the decision-making role although, as has been explained in Section 8.5 above and elsewhere, they continue to have a major role in the Act's processes and are well able to represent local views at all stages of the process. The Act was centralising but is not de-regulating: it provides a more formally defined structure of regulation than would be the case under TACP procedures.

Tewdwr-Jones saw the PA 2008 as something of a reaction to the political difficulties of deciding the location for major infrastructure works in an environment where the Treasury was opposed to spatial planning: the solution was to allow project promoters to make decisions on where infrastructure was to be provided on the basis of geography and market

forces. He did not see this as necessarily a neoliberal approach, although certainly business friendly, and this increasingly so since the end of the labour government in 2010.

10.2.3 The Effect of the Localism Act 2011

While Armitt saw the virtue of the independent Infrastructure Planning Commission established under the Act he was not surprised that it had been abolished under the Localism Act 2011. His view was that

'There is no infrastructure without politics: if you think otherwise you are deluded.'

The reintroduction of a secretary of state as the decision maker under the revised Act was a recognition of a political reality. However he saw the introduction of the Act's processes as a good thing:

'I think the introduction of an independent group of people ... is a sensible approach if you accept that we can't have a Singaporean or Chinese approach...'

He believed that national interest should always outweigh local considerations and that the Act had supported this approach.

'I believe that it should. I should say it was an honest attempt to get that wider improvement.'

While there are difficulties with only assessing the promoters' schemes rather than identifying the optimum scheme he felt the latter process would engender delay and uncertainty: on balance it was better to put up a scheme and improve it through the consenting process:

'Somebody has to come up with something that others can knock spots off and improve. Without that you would come back to a state controlled and influenced process'

Armitt's view was that returning the scheme selection process to the political arena would involve considerable delay in the selection and commissioning of major infrastructure schemes, although he could not provide evidence that the introduction of the Act had speeded up this process. There is evidence

that this, in fact, is not the case, although the distribution of time between the various stages of the consenting process have changed (Marshall and Cowell 2016).

A view held by Allmendinger, Clifford and Tewdwr-Jones was that criticism of the Act as a neoliberal measure was now less valid because of the changes effected by the 2011 Localism Act. They believed this had removed a major area of neoliberal intent by reinstating an elected secretary of state as the decision-taker under the Act's processes instead of the unelected appointees of the IPC as intended under the Act. This concern mirrors the views noted in Section 1.4 and expressed during the parliamentary passage of both the Act itself and the Localism Act, as previously described in Chapter 6.

10.2.4 The Origins of the Act

With two exceptions there was little response from the interviewees to questions about the origins of the Act. The academics reiterated the views expressed in their writings, generally ascribing the political impetus for the Act to dissatisfaction with the uncertainties in time and process demonstrated by the Sizewell B and Terminal 5 inquiries.

Barker related that the type of consenting process, proposed in her report and codified in the Act, was first promoted in the Eddington Report (2006). She noted that the HM Treasury had been keen to 'take politics out of planning' and that civil servants were averse to parliament becoming involved in defining NPSs.

'So I was interested in the Eddington process. There was one thing in it that I didn't likeThe civil servants I was working with were quite keen not to have them go to parliament; I was quite keen that they should.'

She had taken an entirely contrary view, seeing it as imperative that NPSs should be a product of the legislature to ensure the democratic legitimacy of the process, especially where decisions would be taken by an unelected body under the terms of the original legislation.

'The whole system would only work if the Statements were fundamentally democratic.'

In this she echoed Armit's views on the essential part to be played by politics in the process, although perhaps with a greater emphasis on democratic values as opposed to pure practicality.

Morphet maintained that the Act was the result of pressure exerted by civil servants to amend the consenting arrangements for NSIPs to enable those sponsored at a European level to be processed with more certainty in terms of inputs and time than would be the case using TACP procedures. She referenced the reservations apparently expressed by the chairman of the Heathrow Terminal 5 planning inquiry, Sir Ray Vandermeer, about the lengthy and involved process established for the inquiry by civil servants. Morphet saw their insistence on a more complex process than Vandermeer thought necessary as a means of discrediting the TACP consenting procedures thus making radical changes more acceptable at a political level. She saw

'...the civil service as manipulating the 'crisis', and then came Eddington.'

The detail of her proposition that the Act resulted from pressures to improve consenting processes in order to facilitate the European TEN-T project has been set out in Section 9.2 above. Her contention was that

'.. by the time the civil servants get to deal with the implementation of the policy they have no idea that the impetus for them came from the European Union.'

10.2.5 General

Although the interviews followed the general pattern of questions set out in Appendix 4, the interviewees included many 'obiter dicta' in their responses which added insight and context to their responses. This section collects the most pertinent and relevant of these.

During the interviews Clifford dealt with his involvement with Morphet in writing a report on infrastructure delivery for NIPA (Morphet and Clifford

2017). His view was that the Act had proved successful in bringing together the disparate consenting arrangements for major infrastructure projects and the panoply of regulation impacting on such schemes into a workable system supported by those operating the system. He felt that the system was working effectively and was not in need of major amendment although the experience has indicated a number of areas where improvements could be made. In his view these include the greater use of early contractor involvement in developing schemes, and a greater role for local authorities in ensuring that the DCO conditions are properly discharged, and in providing an interface between the project and those affected by it.

Morphet felt that the Act had not succeeded in speeding up the consenting process, but had introduced a degree of inflexibility as a result of the use of development consent orders (DCOs) which were legally binding. She felt that the involvement of the local authority in the process was essential:

'It would be unrealistic to think that in schemes of this size there would be no need to make changes, and one of the mechanisms of flexibility is the involvement of the local council.'

This need for flexibility was especially pressing if there was no involvement at the consenting stage by those actually building the project: such matters could be more easily arranged through TACP procedures.

While Marshall was not enthusiastic about the Act, he allowed that it contained a number of positive improvements to the consenting process. He felt that there was little benefit to be found in extending the use of the Act into other areas: housing was essentially a matter for local determination, as were other areas that might be considered. He thought that the use of the Act for specific schemes, such as a third runway at Heathrow Airport and the Thames Tideway Tunnel, was a misuse of a system for dealing with projects of national, as opposed to local, significance. He pondered the use of the hybrid bill procedure for large rail schemes such as HS2, and opined that the Act's processes might have been too complex for schemes of this scale unless divided to allow for a series of examinations. He suggested that this might be a useful area for further examination.

Tewdwr-Jones saw neoliberalism as ill defined: it was essentially a matter of commodification of everything in an era deeply involved with performance matrices(6.30).

He felt that people now accept sub-consciously that neoliberalism is a part of everyday life:

'Over 49 years the nation has transformed into accepting elements of Thatcherism and neoliberalism almost unconsciously... In planning specifically, neoliberalism has enacted a regime that has led to 'lowest common denominator' solutions: with it we have lost a lot by ignoring synoptic and long-term considerations.

He did not consider 'the primacy of the market' to be a part of Blairite reforms: these were based on Giddens' 'third way' approach, promoting growth while being sensitive to social need and benefit (Giddens 1998). He saw the PA 2008 as something of a reaction to the political difficulties of deciding the location for major infrastructure works in an environment where the Treasury was opposed to spatial planning: the solution was to allow project promoters to make decisions on where infrastructure was to be provided. He did not see this as necessarily a neoliberal approach, although certainly business-friendly, and this increasingly so since the end of the labour government in 2010. He did not see the Act being used in wider areas of infrastructure, feeling that it would have been difficult to apply to housing, although noting that many major housing developments are currently consented without the necessary infrastructure being provided.

10.3 Interview Conclusions

The primary purpose of the interviews was to discover fresh insights into the nature of neoliberalism, specifically in relation to the three indicators of neoliberalism that had been identified in the earlier part of this work, and to gain an insight to the intentions of the politicians involved in the legislation. The process was not wholly successful in achieving these aims because of the inability to engage with the politicians. But some useful insights were

gained from the academics and others involved with the Act who agreed to be interviewed.

That the academics involved should largely continue to support the positions set out in their published work was unsurprising; that those involved in the formation of policy and the provision of infrastructure should not be overly concerned with neoliberal philosophy likewise; the absence of politicians from the list of people agreeing to be interviewed obviously meant that no insights were gained into the political aspects of the legislative process.

It was surprising to find little awareness among the non-academics interviewed of the neoliberal intentions ascribed, in some circles, to the Act. It was patently obvious that the term 'neoliberalism' was not a matter that either Armit or Barker had associated with the Act although issues around some of its indicators had been of interest to them. This was not the case with the academic interviewees, each having written on planning and neoliberalism. There were some reconsiderations on the part of these interviewees of the assertions of neoliberal intent in the Act, largely as a result of the introduction of a secretary of state as decision-taker, but also and to some extent because of the passage of several years and dozens of cases determined under the Act. Some others remained adamant that, at heart, the Act was an overtly neoliberal measure.

A number of interesting ideas about the origins of the Act came from the interviews. The Act's methodology was said to have emerged from the Eddington Report (2006) and was thought to have been subject to much Treasury input. This influence was seen by one interviewee as emanating from European imperatives to install a more certain consenting process than that provided by the TCPA system in advance of new European transport initiatives included in the Trans-European Transport Network (TEN-T). While this historic scenario is credible, no proof was adduced to support it.

The academic interviewees generally thought that the abolition of the IPC and its replacement as decision taker by a secretary of state reduced the neoliberal intent of the Act. This implied that the initial ascription of neoliberalism to the Act in their published works was based at least to some

extent on the apparent diminution of democratic control represented by the IPC process. A description of parliament's approach to democratic control of the consenting process is given in Chapter 7 above. None of the interviewees saw any difficulties with the Act formalising the centralised consenting of NSIPs: the arguments on this point are set out in Chapter 8. What was seen as a continuing support for business efficiency in the Act raised no adverse criticism. Again, the arguments on this point are given in Chapter 9. However, other than this, the interviews provided few new insights into the connection of the Act with these three topics selected as indicators. The general view was that the Act provides a more practical means of dealing with the consenting process for NSIPs than was available under previous TCPA arrangements in terms of defining the inputs applicants must provide, and setting a certain and time defined procedure for examining applications. The interviewees all reflected the parliamentary view that the Act provided a practical development of the consenting process, if only in the limited field of DCO applications.

The interviews provided few, if any, new insights into the connection of the Act with the indicators of neoliberalism. The general view was that the Act provides a more practical means of dealing with the consenting process for NSIPs than was available under previous TACP arrangements in terms of defining the inputs applicants must provide, and setting a certain and time defined procedure for examining applications.

The interview process developed and strengthened the view that restricting the consideration of neoliberalism in the PA 2008 to specific 'indicators' admitted the danger of ignoring its more general and nuanced impacts on the social, intellectual and political environment from which the Act emerged.

10.4 The Wider View

The logical approach of testing the Act against 'indicators' leads to one conclusion, but at the same time the backdrop provided to the Act, parliament, and British society in general by neoliberalism remains to be

considered. With the idea of a wider and more nuanced influence from neoliberal thought and practice in mind, a further consideration of its impacts on the background and environment in which the Act came into being was undertaken. This additional element of the investigation came as a direct result of the interview process and the reflections and considerations which followed from it.

It is important to determine if and to what extent neoliberalism had become normative at the time the Act was passed, and how this might have come about. How do particular views, on social matters, politics, religion and other issues become accepted in society to the extent that they are generally held to represent an accepted 'common sense' position, as has largely been the case with the three neoliberal indicators during the passage of the PA 2008 through parliament? How can practicality and common sense be understood in this context so that the nature of the Act can be properly defined?

The practicality of the Act is considered in detail in Section 11.5 of this work, but the essence of common sense is somewhat more difficult to distil. It has been defined as :

'... the elementary mental outfit of the normal man.' (Lewis 1967:146)

and

'[T]hose plain, self-evident truths or conventional wisdom that one needed no sophistication to grasp and no proof to accept precisely because they accorded so well with the basic (common sense) intellectual capacities and experiences of the whole social body' (Rosenfeld 2011:23),

The analysis of what constitutes 'common sense' has occupied philosophers and political scientists since the days of Socrates. In Aristotelian philosophy it was conceived of as a supposed extra sense possessed by all humans to enable the organisation of the impressions gained from the five basic senses (Crehan 2016:43). Descartes considered that common sense was not an innate sense and moved away from acceptance of it as a specific human faculty (Rosenfeld 2011:21). Thomas Reid in 1764 saw common sense as a

set of original and natural judgements and a repository of commonly shared and unreasoned principles (Kenny 2010:568) and it is this definition that forms the basis of the term in current usage.

These definitions all raise the question of how a set of values and views of the world become accepted as 'common sense'. The practical aspects of common sense, those relating to areas such as engineering and construction for example, can be seen as dependant on physical laws that can be scientifically proved. However, even in this area of activity there is room for diversion, with architectural styles, for instance, varying from country to country and not always dependant on the constraints of local materials and techniques.

With the more cerebral aspects of common sense it is harder to find reasons for the way in which particular meanings and approaches have come to be attached to the term. One example might be political systems, with democracy finding favour in countries across the world. However, the variety of these systems and the wide divergence of approaches and standards means that what might be seen as common sense in one system would not be considered to be so in another and different system.

Hall (1986:42) noted that the 'subject' of common sense is composed of very contradictory ideological formations and quotes the Marxist philosopher and politician Gramsci on the topic:

'...it contains Stone Age elements and principles of a more advanced science, prejudices from all past phases of history at the local level and intuitions of a future philosophy which will be that of a human race united the world over.' (Gramsci 1971:324)

Gramsci suggested a theory of cultural hegemony:

'For Gramsci, 'hegemony' was a special kind of social power relation in which dominant groups secured their positions of privilege largely (if by no means exclusively) through consensual means. That is, they elicited the consent of dominated groups by articulating a political vision, an ideology,

which claimed to speak for all and which resonated with beliefs widely held in popular political culture. (Rupert 2009:177).

Writing in the early years of the 20th Century about the continuing success of capitalism Gramsci suggested that it was able to maintain its control over society through ideology as well as through economic coercion. He considered that the “ruling classes’ developed a hegemonic culture, espousing its own norms, standards and values through the use of cultural institutions in such a way that they came to be adopted as the common-sense values of all (Gramsci 1971:196-200). People in ‘lower classes’ identified their own best interests with this common-sense, and thus helped to maintain the status quo rather than looking for alternatives. In doing so the existing social structure was supported and maintained by consent rather than by force (Sassoon 1991b).

The years following the Thatcher government of 1979 saw the privatisation of swathes of the British economy that had been in public ownership since the time of the post-second world war Attlee government. In the almost 30 years up to the enactment of the PA 2008 the place of the market as the arbiter of ‘right’ and ‘wrong’ had become normative. In Gramsci’s (1971) formulation, the ‘controlling class’ espouses its own norms and values in such a way that they come to be adopted as the common-sense values of all. In this instance, the failure of the legislature to raise any objection to the assistance given to business interests by the Act (albeit business owned by public as well as private owners) can be seen as a reflection of a general acceptance of the proposition that the support of business is a legitimate and proper function of the legislature and, in that broadest sense, this can be seen as support for neoliberalism. So although simple support for business has never been seen as a neoliberal identifier, the thought that the Act must be a neoliberal measure because it was passed in neoliberal times can be seen as having some measure of validity.

The advance of neoliberalism in Britain has been described in earlier chapters, but the extent to which it has become normative is perhaps still to be appreciated. Neoliberalism can be considered to be not only a set of

economic and political precepts and the policies that flow from them, but also as an ideology that constrains a characteristic way of viewing the world and the concomitant actions flowing from that view. Zanotto (2020), building on the work of Van Dijk (2006; 1998), suggests that a particular socially shared belief system, or ideology, that has been 'naturalised' comes to be taken as common sense, without any logical or acceptable alternatives. These ideologies provide the basis for discourses that legitimise and justify certain types of actions while making alternative possibilities unthinkable.

Neoliberalism would appear to fit Van Dijk's (1998) neutral definition of ideology as '*a set of ideas, that is, a belief system socially shared by members of a social group.*' although it is not essential to reach a conclusion on the point. It is perhaps enough to note that the naturalisation of some of the ideas seen as basic to the concept of neoliberalism was so advanced that these topics were not discussed or contested in any meaningful way, and not at all in most cases, during the parliamentary debates on the establishment of the consenting system for NSIPs, either during the original enactment of 2008 or of the changes included in the 2011 Localism Act. To borrow Zanotto's language, neoliberalism may have become a naturalised ideology, and the dominant discourse with regard to changes to the consenting system for NSIPs was that provided by the Confederation of British Industry and the National Housebuilders Federation among others.

Chapter 11 Discussion and Conclusions

11.1 Introduction

The intent of this thesis is to examine the claims made in a variety of academic works (Lord and Tewdwr-Jones 2014; Marshall 2021, 2013b; Clifford and Tewdwr-Jones 2013) that the Planning Act 2008 (PA 2008, the Act) is a neoliberal measure. Since the term 'neoliberal' has acquired pejorative connotations in academic circles (Boas and Gans-Morse 2009; Peck 2018) it is useful to determine if this is the case, since to paint an effective consenting system in these colours may unnecessarily reduce its acceptability. Although the Planning Act 2008 has not been the subject of a much academic writing, it would also be beneficial to confirm or refute in academic argument the claims made in such literature that the Act is flawed as a result of its alleged neoliberal intentions. These objectives were encapsulated in the research question 'Is the consenting regime for nationally significant infrastructure projects (NSIPs) established by the PA 2008 a neoliberal measure; does it represent a practical advance in the way in which planning applications for infrastructure projects are determined; or is it both?'

The Act represents a step-change in approach to the process for consenting major infrastructure works. Although its antecedents can be traced through legislation back to the 18th century it introduces a number of original concepts that mark it out as a radical development in planning. It introduced the independent Infrastructure Planning Commission (IPC), which, although abolished by the Localism Act 2011, established the inquiry process into applications for Development Consent Orders (DCOs) defined in the Act. That process remains in place, albeit the decision-maker is now a secretary of state rather than the IPC. This was the only change to the Act engendered by the Localism Act 2011 while all other elements of the process remain. This gives certainty about the required content of applications, the form of

the inquiry, and the timescale involved. These elements of the Act establish a defined framework of certainty that was lacking in previous arrangements for consenting major infrastructure projects and, as such, it is a positive development in planning practice.

This chapter brings together the main points arising from the literature review and succeeding chapters, drawing conclusions from the evidence that they provide in order to answer the research question. It reviews the Act's historical background, and the analysis of its legislative progress through parliament. It considers the investigation into the neoliberal indicators (identified in Sections 1.4 and 3.5). set out in the analysis and interview chapters. Having demonstrated that the indicators do not show that the Act is overtly neoliberal, a view supported by evidence from the interviews undertaken, it then considers if neoliberalism may have become a normative view in Britain, a current version of what is generally thought to be 'common sense'. The chapter then sets out an answer to the research question, before suggesting further areas of investigation that may prove to be of benefit in improving current consenting arrangements.

The great majority of the consenting decisions under the Act have been reached within the defined time, with those falling outside the requirement being subject almost exclusively to an extended final decision-making period, rather than some other procedural delay. A number of extensions to the Act's coverage have been made: for example, in the case of some commercial developments and the geological disposal of radio-active waste, presumably because of this perceived success in delivering timely decisions in complex cases.

While the number of consent applications made under the Act represents only a very small proportion of all planning applications, the success of the Act's procedures for examining these applications suggests there is scope for taking a similar approach in a range of planning applications in addition to NSIPs. It would be a missed opportunity for continuing improvement if a misunderstanding of the purpose and nature of the Act and the advantages it

brings to the planning system were to prevent the adoption of its processes where it might add certainty about both procedure and time.

The literature review addressed the origins and development of neoliberal thought as a theoretical concept and its application in the world of politics, first through the governments of Pinochet, Thatcher and Reagan. It looked particularly at the way in which the concept impinged on the practice of planning in the UK and the factors at play in bringing about the passing of the PA 2008. It noted that during the time of the Thatcher and Major governments no overt attempts were made to change planning processes, although the pressure on local authority budgets was seen to have a considerable impact on the service provided at a local level. More direct attention was initially paid to the dismantling of regional planning initiatives, with the pressure for change in the planning process for major infrastructure projects only coming to the front of the legislative queue during the Blair governments from 1997 onwards. The literature review also identified what is meant by infrastructure in a variety of contexts, and identified a history of legislation dealing with the development of transport and public utilities dating back to the late middle-ages in the case of road and river transport (Albert 1972; Guldi 2012), and to the introduction of new technologies in the case of canals (Skempton 2002; Boyes and Russell 1977), railways (Nash 2002), gas and electricity utilities (Falkus 1967; Hannah 1979), water supply (Murray 1869) and sewerage systems (Trench and Hillman 1984).

It has been noted that many of the authors whose works dealt with planning matters after 2008, had little or nothing to say about the PA 2008, although Marshall (2013b) and Clifford and Morphet (2023) are exceptions. Those that did mention it thought the Act was neoliberal in its intention and effect, although the term 'neoliberal' was generally undefined, and it was not made apparent what characteristics the term was meant to represent in this context. Lord and Tewdwr-Jones, for instance opined that

'This more starkly neoliberal account of planning as a vehicle to enable development gained fullest expression in the Planning Act 2008'

and

'The culmination of this process can be seen in the 2008 Act in that it represents New Labour's final attempt to aggressively push their vision of a neoliberal form of English planning...' (Lord and Tewdwr-Jones 2014:351-352)

Why there is a lack of engagement with the PA2008 in planning literature is not obvious, given the important changes in the consenting process for major infrastructure schemes it introduced. It may be because the pool of academic writers in the UK is small, and that there are many topics in the world of planning competing for their attention. There is an obvious need to provide planners, both students and practitioners, with an accurate description of the Act and its processes, and to place it in an appropriate context rather than glossing it with what has become the general pejorative of neoliberalism.

The use of the term 'neoliberalism' without the benefit of a definition has been noted as a common theme among academic writers on planning (Lord and Tewdwr-Jones 2014; Marshall 2013b). As the frequency of references to the topic has increased it appears that it is more often used in a negative sense, without a proper explanation of the meaning it is intended to convey (Boas and Gans-Morse 2009; Peck 2018). A number of writers have addressed this effect, including some who have been much involved with the analysis of neoliberalism over many years (Birch 2017). Some have expressed doubts that the use of the term now retains much value in academic circles because of this lack of definition (Peck and Theodore 2019), others (Crouch 2011; Gamble 2006) suggest that the reification of neoliberalism should be avoided, and a proper analysis of its constituent characteristics undertaken in deciding the proper application of the term. This approach appears to be the most logical in outlook and approach, allowing for each alleged 'attribute' of neoliberalism to be examined in detail and for conclusions based on the evidence to be reached. Those characteristics most pertinent in the case of the PA 2008 are democratic legitimacy, centralisation and decentralisation, and business empathy and orientation. These factors had been identified as representing distinct traits

within neoliberalism by a number of authors, especially Lord and Tewdwr-Jones (2014), Clifford and Tewdwr-Jones (2013), Castree (2006), and Peck and Tickell (1994), and have been used in this present analysis as indicators of neoliberalism.

To determine if the Act was neoliberal ab initio a detailed analysis of the legislative process that gave rise to the statute was carried out. This identified the occurrences of references to these 'neoliberal indicators' in parliamentary debates, with the results shown in Chapter 6. This analysis concludes that there was no overt intention among the legislators to produce an act which specifically furthered a neoliberal agenda.

11.2 Historical Context

The PA 2008 sits in a historical context of planning legislation of a variety of types, enacted by parliament over many centuries. Its connections to previous legislation were investigated to place the Act in context and to determine how this background may have influenced the formulation of the Act.

The development of transport and services infrastructure in the UK has been accomplished through the use of parliamentary legislation allowing scheme promoters to make use of land necessary for the completion and operation of their projects but which was not in their ownership or under their control. This initially involved individual private acts of parliament for each road, canal and railway project, but the form of the legislation became standardised with use and over time.

There was a form of path dependency in the nature of the legislation, in the sense that parliamentary draughtsmen tended to employ methods they knew would be effective based on previous experience. Since parliament is able to pass whatever legislation it decides upon, then this approach can be seen as one of building on experience rather than being constrained by previous decisions.

By the end of the eighteenth century the sheer volume of private bill legislation brought before parliament for turnpike and canal developments raised concerns that members of parliament would not be able to deal with the detail of the process, and this resulted in measures to standardise the process. The standard specification produced in 1794 defined details to be included in a bill: plans and cross-sections of the scheme; details of ownership of the land and property affected; and funding arrangements (Parliamentary Records 1794). These are all matters still included in the applications for consent under the PA 2008.

The use of gas lighting and the introduction of electricity for commercial and domestic lighting and power was a further driver of legislation and raised concerns about the workload on members of parliament. This resulted in the setting up of a system where the Board of Trade was charged with the administration of applications to install facilities made under acts of parliament, with decisions returned to parliament for ratification. Similar processes were introduced for the consenting of tramways and light railways. In introducing the debate on the second reading of the Transport and Works Bill in 1991, the Secretary of State referred to the Light Railway Act from 1896 (Hansard 1991) and in introducing the bill in the House of Lords, the Minister of State at the Department of Transport referenced both that act and the Tramways Act 1870 (Hansard 1992). These references illustrate this element of continuity in the legislation controlling infrastructure development.

While specialist consenting procedures were retained in legislation throughout the 20th century for some types of major infrastructure, the use of Town and Country Planning Act (TACP) legislation and the continued use of private bills for other types of major infrastructure projects was found to be increasingly cumbersome. The introduction of powers under the Highways Act 1980 and the Transport and Works Act 1992 resulted from a perceived need for a more easily navigated path to planning consent. The lengthy and tortuous public inquiries into the Sizewell B and Terminal 5 applications served to focus attention on producing a consenting system for NSIPs that

addressed the deficiencies in the then current system illustrated by those inquiries.

The historical context of the Act provides an alternative and persuasive account of its provenance, as opposed to the presumption that its origins were in a scheme for the neoliberalisation of the objectives and modalities of the planning process stemming from the Thatcher governments' support for a neoliberal reshaping of society in general. The interviews carried out as part of this work provided no support for the view that the Act in its final form after the 2011 Localism Act amendments was anything other than a rational development and codification of the consenting regime for NSIPs. It can be seen as a natural progression of a consenting regime eminently capable of developing in response to new technological challenges and societal changes.

11.3 Neoliberal Indicators

11.3.1 Democratic Accountability

Democratic accountability is taken here to mean the responsibility of the legislature to pass effective laws and to ensure that they are properly observed and managed. This has to do with the primacy of parliament in the codification of laws, rather than the exercise of personal rights to be heard in proceedings affecting individuals. While this latter point has exercised some commentators (Rydin et al 2018b), the role of government and, ultimately, parliament in deciding national policy on planning matters and in particular those policies involving national needs and responsibilities, is considered to be of overarching importance in the effective management of a modern state.

Identifying whether democratic accountability has been established in these areas involved the analysis of the parliamentary debates and committee hearing that led to the passing of the PA 2008. It also required the analysis of the structures set up by parliament to oversee and manage the process of

establishing National Policy Statements (NPSs), and the way in which each of these was handled within those structures.

This analysis identified 37 topics of recurring interest to the legislators during the parliamentary process. The data have been used indicatively to identify those areas of major concern to the legislators and to position the indicative topics relating to neoliberalism within the context of those concerns.

It was apparent from the analysis that democratic accountability was a major concern to legislators. Of all the topics identified during the legislative process it was the most mentioned during the second reading debate in the House of Commons (Table 6.1), accounting for nearly 15% of the topic references. However, what was discussed under this topic was generally parliamentary accountability for the planning of NSIPs and the desire of parliament to continue to exercise control over the consenting process. Issues of local democracy, in the sense of the ability of people affected by individual infrastructure projects having rights of representation and of veto in the consenting process, did not feature to any great extent in the parliamentary process.

The procedure established by parliament was for development Consent Order (DCO) applications under the Act to be administered by a body appointed by parliament, the IPC, without reference back to parliament for final approval. Democratic control was to be exercised by parliament determining the detail of the NPSs against which such applications were to be judged and which thus constrained the IPC to make its decisions in line with the explicit will of parliament. The legislature went to great lengths to ensure that a system of review of NPSs was established under the Act, and every NPS has been subjected to scrutiny through this system. The Localism Act 2011 abolished the IPC and returned the decision-making role to the relevant Secretary of State. It also amended the detail of the NPS scrutiny system, although this remained substantially as first established. It did not, however, make any change to the examination process or any of the other processes established by the PA 2008.

The Act effects the removal of policy matters defined in the NPSs from further debate at the examinations of applications under the Act, so that only issues relating to the local impact of a proposed scheme are arguable in that forum, with national policy determined by parliament. However, parliament has ensured that democratic accountability for NSIPs continues to reside with itself through control of the NPS process. The return of the decision-taker role to an elected politician can be seen to enhance this level of control and accountability. This refutes the arguments put forward by Lee et al (2013), and Rydin et al (2015) that there is a lack of democratic accountability in the consenting process, removing the consenting process for NSIPs from the ambit of democratic control. Parliament has taken tighter democratic control of NSIPs by controlling policy in this area through the NPS processes.

The interviews carried out as part of this research indicated that the majority academic view that the the Act was a neoliberal measure largely resulted from the lack of political input to the decision-making process. With the removal of this objection as a result of the abolition of the IPC by the Localism Act 2011 it was the generally accepted among the academic interviewees that the neoliberalising effect of the original legislation had been largely reduced.

11.3.2 Centralisation and Decentralisation

Centralisation and decentralisation have been seen as indicators of neoliberalism in that the neoliberal relaxation of government legislation controlling what were once publicly owned enterprises is followed by the introduction of new nationally applicable legislation more obviously attuned to delivery from a wider range of suppliers (Lord and Tewdwr-Jones 2014; Castree 2006; Peck and Tickell 1994). It is also the default position of the British constitution, with all power emanating from the crown through parliament, with powers granted to other subsidiary bodies always subject to amendment or removal by act of parliament. The nature of the PA 2008 is inherently centralising, with planning applications for major infrastructure projects that were originally matters for local planning authorities to

determine being brought back under the direct control of a central government body, either through the IPC or by the Planning Inspectorate and a Secretary of State under the Localism Act amendments.

Legislators were little concerned with centralisation as an issue during the passage of the Act to the statute book. The analysis of the frequency of references in the House of Commons second reading debate, given in Table 6.1 above, indicates that the topic ranked last at equal 28th, with business empathy and orientation and eight other topics. In all other stages of the parliamentary process centralisation received less than 1% of topic references, apart from at the 'ping pong' stage (Table 6.12) where this figure was marginally above that level. This shows that this topic was not an issue of major concern to the legislators any more than it had been to those giving evidence to the bill committee.

The Act deals with the consenting of NSIPs and, given that it does not direct or promote any particular project, it cannot be seen as an engine for the central control of infrastructure provision, albeit the locations in which nuclear power stations can be built are defined in the relevant NPS. It can be argued that this centralised consenting function predated the Act, since planning applications for major projects were 'called in' for determination by the Secretary of State as a matter of course, especially where the local authority raised objections to the scheme.

Under pre-Act arrangements, as exemplified by the cases of Sizewell B and Heathrow Terminal 5, it was sometimes a matter of public inquiries trying to determine what government policy was, and how it applied to the case under consideration (Pellman 2008; O'Riordan et al 1988). The PA 2008 requires decisions to be made on the basis of explicit government policy specifically set out or referenced in the appropriate NPS. This now puts matters in a logical order and provides certainty with regard to government policy, although the interpretation of that policy can be problematic. Recent decisions on the reopening of Manston Airport in Kent, the road scheme on the A303 at Stonehenge, and the power station re-powering scheme at Drax (all schemes where the Secretary of State did not follow the advice of the

Examining Authority, and all of which have been the subject of judicial review) indicate that difficulties of interpretation still remain.

The beneficiaries of the greater certainties provided by the Act, in terms of government policy set out in NPSs and statutory timescales for examinations and decisions, are those organisations promoting NSIPs. This is the case if they are private or public companies in the case of power generation, ports or large waste-water infrastructure, or public enterprises in the case of motorway and trunk road schemes or railway developments. There is no distinction in the procedures set out in the Act between the various possible ownership arrangements of the infrastructure project for which consent is sought.

The relationship between the national interest as determined by the government and the interests of people and communities directly affected by a particular project remains an area of difficulty. In addition to an array of statutory bodies, the PA 2008 allows, under Sections 102, 102A and 102B, wide access to the examination of the application by 'interested parties' by the submission of a 'relevant representation' in a prescribed form. This essentially allows any body or individual with an interest in the scheme (the nature of the interest undefined and interpreted very widely) to become part of the process and to provide written or oral testimony to the Examining Authority. While this facility allows local individuals and public interest groups access to the process, the Act at Section 102 (4)(e)(2) specifically proscribes representations containing material about the merits of policy set out in an NPS.

A definition of the duties of a government is difficult to find in the academic literature or, for that matter, anywhere else. The government website 'Parliament and the Government' offers under the heading 'What does the Government do?' that:

'The Government is responsible for deciding how the country is run and for managing things, day to day. They set taxes, choose what to spend public money on and decide how best to deliver public services, such as:

the National Health Service; the police and armed forces; welfare benefits like the State Pension; the UK's energy supply'. (HM Government 2021)

The extent of these obligation and powers is a contentious area, the scope and complexity of which will range according to the political stance of the writer, and remains a battle ground of political argument. Many might agree that a government's first duty is to keep its people safe against aggression at home or abroad. A majority might feel that a basic level of health and welfare should be provided by the government, while some might look for it to provide and maintain the infrastructure necessary to support industry, commerce and the means of employment. Hayek speaks of the state necessarily providing those things that it would be unreasonable or impractical for individuals to provide for themselves (Hayek 1944). In the case of the consenting of NSIPs under the PA 2008, the balance between what the central government deems appropriate and the aims of local and specific interests might be found using the Benthamite utilitarian and consequentialist principle of seeking the greatest benefit for the largest number of people (Kenny 2010: 926). In reality, the earlier views of Burke on the role of parliament could be thought to be more in line with the intentions of the PA 2008. He argued that

'Parliament is a deliberative assembly of one nation, with one interest, that of the whole - where not local purposes, not local prejudices, ought to guide, but the general good, resulting from the general reason of the whole' (Burke 1774:58 quoted in Campbell and Marshall 2002).

However, democracy is at play both at a local level, with the ability of interested parties to influence the outcome of examinations, and at a national level, with NPSs produced after a full parliamentary examination and the decision-maker being a Secretary of State answerable to parliament.

Although the PA 2008 does nothing to promote specific infrastructure projects it enables both private and public enterprises to gain planning approval for major infrastructure projects through a defined process based on known government policy. It is centralising, but in this it only confirms the practice of the previous consenting arrangements and does no more than

might reasonably be expected of a system dealing with national infrastructure. The Act is not an example of the 'roll-out' stage of the 'roll-back, roll-out' neoliberalism described by Peck (2010) since the legislation covering the consenting of major infrastructure projects had never been rolled back by the tide of Thatcherite deregulation. The function has always been centralised and that has not been changed by the Act.

There was agreement among those interviewed that the consenting of NSIPs was a legitimate matter for central government involvement. While there was some concern on the part of one interviewee that the role of local authorities in leading the process had been removed by the Act, it was accepted that the setting of national infrastructure strategy was not a matter where local views should override the national interest. Local authorities were still substantially involved in the Act's modalities and still able to represent local views at the examination of applications for DCOs. The Act enshrined the centralised approach of TACP act procedures using the 'calling in' of applications for determination by the secretary of state. This further codification of the centralised role of the decision-taker was seen as a natural development of the process rather than a neoliberal advance.

11.3.3 Business Empathy and Orientation

Neoliberalism promoted an unwarranted faith in the efficiency of markets to provide economic and political freedom (Jones 2012:271), and to self-correct themselves if left unregulated. Paul Krugman, the Nobel prize-winning economist, noted that

'Laissez-faire absolutism (promoted by neoliberals like Friedman) contributed to an intellectual climate where faith in markets and disdain for governments often trumps the evidence.' (Quoted in Jones 2012:20)

A legislature passing neoliberal measures, such as the Act is alleged to be (Lord and Tewdwr-Jones 2014; Marshall 2013b), should be interested in discussing the impact of the measure on the market for infrastructure projects, and its effects on the economy more widely. However, as noted above, the topic of business empathy and orientation, which included all

references to business and similar wording, inspired very little concern on the part of the legislators, and the issue was not raised in any of the committee or report stages in the House of Commons apart from the third reading debate: it was not mentioned in any of the stages of the Bill's progress through the House of Lords (Tables 6.3 to 6.12).

The absence of overt attention to business empathy and orientation during the Act's legislative progress does not mean that neoliberal influences were not at play during its drafting, but other influences were also acting. The attempts by lobbying groups from the business community and from public interest and environmental groups to change the way in which large planning inquiries were conducted were largely, if not wholly, successful. All these groups saw a need for government policy to be properly defined so that planning applications could be assessed against known criteria. They each saw a need for a defined and time limited process which would enable both promoters and other participants in the inquiry process to be aware of how and when matters would proceed. There is some evidence that many of the changes in the consenting process that seemingly aligned with the objects of the lobbying organisations were, in fact, changes sought by civil servants and, presumably, their political masters. The Sizewell B and Heathrow Terminal 5 inquiries crystallised points of dissatisfaction with the previous arrangements and were, perhaps, consequential in driving change. But a desire for more certainty in the process was a common factor for all sides of the argument. It appears that none of the parties involved in these inquiries was in favour of an ill-defined and inefficient system, operating with time at large. The fact that groups with disparate interests and objectives should agree on the need for change, and the broad outline of that change, indicates that there was not one overriding political or philosophical motive in the pressure for change: it was merely a matter of practicality. So the desire for the changes needed to rectify these problems cannot be thought of as the sole preserve of bureaucracy or of environmentalism, of business interests or of neoliberalism.

The Act contains no reference to the nature of the ownership of infrastructure projects suitable for consenting under its procedures. It serves

as an enabler and not a driver of NSIP projects, whether promoted privately or publicly.

The consensus among those interviewed as part of this research was that the Act was business friendly, but was not specifically neoliberal. It assisted business (whether privately or publicly owned) by defining the consenting process for NSIPs much more closely than had been the case under the TACP process. It provided a list of the information to be included in an application for a DCO under the Act, full details of how the examination of the application would be carried out, with a statutory timetable for that examination and for the delivery of a decision. This was seen as being beneficial to applicants as providing more certainty than previously had been the case. It also consolidated a number of different application routes (the Electricity Act, Transport and Works Act) and codified the use of recent environmental and human rights legislation, all of which will have assisted the application process. None of this was seen by the interviewees to be neoliberal in intention or in result.

11.4 A backdrop of Neoliberalism?

From the foregoing it is apparent that an examination of the three indicators of neoliberalism in the PA 2008 has failed to identify evidence that the Act is overtly neoliberal in its intent. However, before concluding that this lack of evidence is sufficient to reject the assertion of neoliberalism, it is necessary to consider the general environment in which the Act came into being and to test Marshall's assertion (Marshall 2013b) that since the Act was passed in neoliberal time then it must be neoliberal in nature.

It is entirely possible to see neoliberalism, in the sense of the supremacy of the market economy, as having been elevated to a hegemonic status in the politics of the UK. As discussed in the previous chapter, in this context it may well be that neoliberal measures are considered to be common sense, and not challenged as moving too far from the previous paradigm to be unacceptable.

Following this line of thought, it is possible to see the establishment of a system of law and administration built on the perceived benefits of a market-led economy becoming the accepted common sense of society at large. This was, perhaps, especially so in a time when the alternative intellectual standpoint of the Marxist analysis of economic and social development had appeared to be discredited after the fall of the Soviet Union in the 1990s. Similarly, the Keynesian economic remedies of the post-Second World War era were seen to offer few solutions to the economic difficulties of the 1970s. The market approach became hegemonic, as apparently the only 'common-sense' approach, and was successfully espoused and propagandised in the UK by Margaret Thatcher as the 'housewife economist' at the head of a Conservative government with strong neoliberal tendencies. This, perhaps, accounts for the conflation of the market-led economy with neoliberalism in the minds of some commentators, and their tendency to demonise both together (Lord and Tewdwr-Jones; 2014; Clifford and Tewdwr-Jones 2013; Harvey 2005). The interviews carried out as part of this work showed that the non-academic contributors made little or no connection between the Act and neoliberalism: the academics, with one exception, had to a greater or lesser extent seen the Act a neoliberal measure. They saw the replacement of the IPC by a secretary of state in the decision-taker role as decreasing, if not entirely removing what was, in their view, the neoliberal complexion of the measure.

The PA 2008 is thus something of a mongrel: thought to be of neoliberal parentage, it is found to have little or no neoliberal DNA in its veins. It was certainly born in neoliberal times and has assumed some of the cultural associations of those times, but its ancestry is found to go back many generations, through industrial and agricultural revolutions to the Tudor era and beyond. The academic literature that has dealt with the Act has generally seen it as being neoliberal in intent, as a part of the dominant philosophy surrounding the planning profession at the time of its enactment. In reality, the Act has been only an enabler of a more defined and effective process for considering the consent or otherwise of NSIPs. It follows a

tradition of seeking practical solutions to the real-life problems thrown up by developing technology and societal changes over the centuries.

11.5 Practicality and the Act

The second part of the research question asks if the PA 2008 represents a practical advance in the way in which planning applications for infrastructure projects are determined. The ability to determine practicality depends on access to information about how its procedures have been applied and to what effect. The application process under the Act is carried out electronically, with all documentation mounted on the publicly accessible National Infrastructure Planning website. This is maintained until some while after a decision has been made, at which point the application and hearing documentation are archived, while the Examining Authority's report and the secretary of state's decision letter remain accessible on the website.

The PA 2008 has proved to be an effective means of processing DCOs for NSIPs. Starting very slowly in the wake of the 2008 financial crash, the number of applications decided by 1st September 2021 had reached 99, with a further two applications being considered for acceptance into the process, six at the pre-examination stage, seven undergoing examination, three awaiting a recommendation from the Examining Authority to the Secretary of State following the completion of an examination, five awaiting a decision by the Secretary of State, and one application formally withdrawn. A further 64 schemes were at a formal pre-application stage in which there had been preliminary discussions between a scheme promoter and the Planning Inspectorate about the form of the application for a DCO under the Act.

Only the first application under the terms of the original Act was dealt with by the IPC before its abolition by the Localism Act 2011. All of the examinations carried out so far have complied with the timetable requirements of the Act apart from one, with examinations concluded within six months and a recommendation made to the secretary of State within a further three

months. The single exception was that of the A38 Derby Junctions highway improvement scheme, where the examination coincided with the introduction of emergency powers relating to the Covid 19 pandemic. In the event, the examination period was formally extended by three months to allow for the establishment of remote access for hearings. Subsequently examinations were concluded within the originally specified period.

Decisions by the Secretary of State have generally been made within the three-month period specified by the legislation, but on 17 occasions the deadline has not been met. On all of these occasions the Secretary of State has observed the legislative requirement to report the delay to parliament and to set a new deadline date. In all cases the Planning Inspectorate's on-line record indicates that a statement notifying parliament of the change to the timetable would be made in the appropriate chamber in accordance with S107(7) of the PA 2008. An example is the extension of the decision period for the Richborough Connection Project as a result of the 2017 general election. This was dealt with by a statement by the Under Secretary of State in the Department for Business, Energy and Industrial Strategy to the House of Commons on 26th June 2017 (DBEIS 2017). Again, a Transport Update Statement was made by the Secretary of State for Transport to the House of Commons on 29th April 2020 setting new decision dates for five road improvement schemes, albeit no reasons were given for the delays other than that they were

'to allow for further work to be carried out before they are determined by the Secretary of State.' (Hansard 2020)

Of these cases, 16 have now been decided with the longest delay being 14 weeks and the average just over six weeks.

Of the schemes which have passed through the process to a decision, the recommendation of the Examining Authority has generally been accepted by Secretary of State. However, in 12 instances this has not been the case: two of these were for schemes relating to underground carbon capture, where the government withdrew a subsidy scheme so making the schemes unviable, and five were for a variety of other energy projects, with three

recommendations to make a DCO and four to refuse an Order not being supported by the Secretary of State for Business, Energy and Industrial Strategy (in its latest formulation). Recommendations to refuse DCOs for five transport schemes were not accepted by the Secretary of State for Transport. It is not the intention to carry out a full analysis of the decisions taken under the Act but the case of consents for major road projects remains one where the Secretary of State is the decision maker for applications made by an organisation (National Highways, as a government company wholly owned and operated by the Department for Transport) for which he has direct responsibility.

Six decisions have been the subject of judicial review, with four either overturned or referred back for the decision-maker to reassess the decision. A number of different reasons for delay have become apparent, with some cases having been subject to a number of them. Of the cases that failed to meet the deadlines specified in the Act, one was as a result of an extended examination period owing to the impact of restrictions relating to the Covid-19 pandemic. In all other cases the examinations were completed and the examining authorities' reports delivered on time. The other cases involved delay at the decision-making stage as a result of a need for additional information and consultation on matters not entirely resolved during the six-month examination process; ten of these were as a result of changes to the original scheme introduced by the promoters late in the process to address apparent deficiencies in the scheme; four resulted from the 'purdah' convention which prevents government decisions on planning matters being made once a general election has been called; and two because of the need to determine a prior application before proceeding to a decision. The impact of the covid pandemic appears to have affected the decision-making process to a greater extent than the examination process, being referenced in five cases. In some instances a combination of these of reasons was given for the delay, with an average delay in deciding these applications of just over six months, and the longest being 14 months in two instances.

Marshall and Cowell (2016) concluded that decision times for most infrastructure projects have not altered significantly as a result of the

changes occasioned by the PA 2008. They note, however, that there is a marked redistribution of time between different components of decision-making processes. With the application process now defined, the preparation of the scheme for the consent process takes place before the project is accepted for examination under the new procedure. It is not possible, therefore, to compare the delivery performance of planning decisions under the Act with previous arrangements since no delivery criteria existed prior to the introduction of the Act. However, a performance of 83% delivery success might be thought successful in the light of the societal difficulties caused by the covid pandemics and the democratic delays resulting from the parliamentary electoral process: without these factors the overall delivery percentage would have exceeded 90%. The delivery performance of the examination process alone was 99%, with only one examination delayed by restrictions occasioned by covid-19 regulations. The most substantial cause for delay in the decision process was the need for additional consultation thought necessary by the Secretary of State after the delivery of a recommendation by the Examining Authority. It is not possible to determine if this additional consultation would have been necessary if the Examining Authority was the decision-maker as intended by the Act as originally legislated rather than the appropriate Secretary of State as became the case under the changes made to the Act under the Localism Act 2011.

The PA 2008 process for assessing the suitability of proposed NSIPs in terms of the criteria referenced in the Act produces results generally in accordance with the requirements of the Act. While there may be a passing concern about the need to maintain both the impartiality and the appearance of impartiality of the decision-maker in the case of road schemes, the generality of decisions made under the Act are not susceptible to these sorts of difficulties.

A number of changes to the PA 2008 have been made since its enactment, many of them minor, involving the modalities of the examination process, others to accommodate changes in the relationship between the Act and the developing consenting arrangements of the devolved administrations in Scotland and Wales. More major changes have resulted in the replacement

of the IPC as the decision-taker in applications made under the Act by elected politicians, and the extension of the coverage of the Act to include areas of potentially contentious development including business enterprises, the storage of nuclear waste, 'fracking' (potentially), as well as housing development in some circumstances. These extensions indicate that the government has confidence in the efficacy of the Act's approach in dealing with contentious development.

Morphet and Clifford (2017) carried out an analysis of the Act for the National Infrastructure Planning Association (NIPA), but this dealt purely with the modalities of the DCO process and, despite its distinguished authors, was not intended as an academic work in the usual sense. A precis of the report recommendations are given at Appendix 3. This work provides validation of the benefits of the PA 2008 process for those involved in the promotion and procurement of NSIPs and identifies areas for future improvements to the process which could be implemented by means of secondary legislation. It also illustrates by default that the impact of the new process on others peripherally involved with it, particularly as a result of their interest in property affected by an NSIP project, has not yet been fully explored.

The general view of the academic interviewees was that the Act had been a success in that it had provided certainty to the consenting process in terms of a set procedure operated to a defined timetable. It had rationalised a patchwork of acts relating to major infrastructure projects and incorporated other measures covering environmental and human rights legislation.

Clifford and Morphet expanded their views on the Act in their 2023 book but essentially confirmed this stance. They also opined that

'The system and ongoing reforms to it cannot be divorced from a hegemonic neoliberal political economy....' (Clifford and Morphet 2023:261)

While it is very unlikely that any piece of legislation can ever be described as wholly successful, the analysis presented above indicates that the PA 2008

has provided a practical means of assessing applications to construct NSIPs. It has achieved this by: setting out the detail of what must be included in an application in order to show that the project will meet all legal requirements; defining the means of public consultation; establishing a defined examination process with access for everyone with an interest in the proposed project; defining a time-limited process for the examination, the production of a report and a decision by the relevant Secretary of State; and defining the legal remedies available to those dissatisfied with the decision.

11.6 Answering the Research Question

To answer the research question ‘Is the consenting regime for NSIPs established by the PA 2008 a neoliberal measure; does it represent a practical advance in the way in which planning applications for infrastructure projects are determined; or is it both?’ required a developed understanding of what is meant by neoliberalism. Attempts to find a satisfactory definition of the term led to the adoption of the approach advocated by Crouch (2011) and Gamble (2006) who thought it logical to undertake a proper analysis of the constituent characteristics of neoliberalism in deciding the proper application of the term. Three characteristics were identified from the literature which could act as indicators of neoliberalism: decreased democratic accountability; centralisation and decentralisation; and business empathy and orientation.

An analysis of the passage of the Planning Bill 2008 through parliament enabled the extent to which these indicators were a consideration for members of parliament to be determined. An empirical analysis of the parliamentary debates and committee hearings showed that, while democratic accountability was a matter of considerable interest to the legislators, issues of centralisation or decentralisation, and business empathy and orientation were barely mentioned. Further investigations into the nature of the indicators identified the extent to which each of them contributed to the overall effect of the Act on the planning system.

In terms of democratic control, parliament went to great lengths to ensure that it took charge of the system of NPSs and made provision for local concerns to be fully represented during the examination process for individual DCO applications. The reversion of the decision-maker role, under the provisions of the Localism Act 2011, to a secretary of state answerable to parliament, reinforced this element of democratic control. This was achieved by the abolition of the IPC which had been established as an independent custodian of the Act's processes and sole decision-maker about the acceptability of DCO applications.

Centralisation was identified as being a concomitant of planning in Britain, with parliament always being the ultimate source of consent for development. This power was delegated to local authorities for the administration of the process, albeit this delegation could be rescinded. The Act itself places no additional duties on central government to sponsor or fund major infrastructure projects, with government direction of investment in NSIPs being achieved through a variety of other legislation and regulation.

Although centralisation of the consent process has always been a reality, it has been raised as an objection to the PA 2008 in practice because the views of people affected by a proposed NSIP were not thought to be a consideration in the examination process (Rydin 2013). This is to misunderstand the process, which gives access to all interested parties to make a case in the formal examination of the application either orally or in writing. What is not available is the ability to influence government policy contained in an NPS: this can only be done through changes to the NPS instigated by parliament. While this removal of government policy from the ambit of an individual examination may be seen as a diminution of a democratic right, the reality is that the more general right of the population at large to have matters relating to the provision of national infrastructure decided by parliament has been secured and enhanced by the provisions of the Act. Perhaps the more concerning point is that there is little or no public or political involvement in decisions about which schemes are to be brought forward for consent and construction, and very little opportunity for wider

policy issues to be discussed other than within the parliamentary process in establishing the NPS for the particular class of NSIP. This situation, however, predates the introduction of the PA 2008 and does not result from any of the changes to the planning process introduced by the Act.

Business empathy and orientation were obviously a factor in the framing of the Act, as its intention was to make the task of obtaining consent for the development of NSIPs if not simpler than under previous arrangements then at least better defined both in terms of the content of the application and the timescales for its processing. However, the Act makes no distinction between applications on grounds of ownership, with private companies being treated in exactly the same way as public bodies. On this basis it cannot be said to favour the private enterprise beloved of neoliberalism over nationalised or otherwise publicly owned organisations. The operation of business interests in the origins of the Act is apparent in the actions of the Confederation of British Industry and the Home Builders Federation, among others, in pressing for a defined and time-limited process to deal with the consenting of major infrastructure projects. However, exactly the same pressures were being exerted on the government by community, environmental and other public interest organisation, and so the Act's conformance with these precepts cannot be seen as particularly favouring business interests: it favoured all parties concerned about establishing a more certain consenting process.

The conclusion of this analysis is that the PA 2008 is not legislation designed to promote neoliberal attributes, in that the indicators of neoliberalism have not appeared to any great extent in its provisions. The Act was not intended as a neoliberal measure by the legislators who enacted it and is seen to be neutral in its impact, dealing with both public and private enterprises in the same way. It is broad-based, ensuring that DCO applications under the Act are examined and consented using procedures defined by parliament in terms of content and time. The roots of these procedures are found in the consenting processes developed by parliament since the 18th century and provide a historic continuity for the Act.

The advance of neoliberal ideas generally were seen as reaction to the perceived failure of Keynesian solutions to the economic problems of stagnating economies and inflation in the 1970s

'Neoliberal ideas— monetarism, deregulation, and market- based reforms— were not new in the 1970s. But as Keynes suggested, they were the ideas to which politicians and civil servants turned to address the biggest economic crisis since the Great Depression.and how the neoliberal faith in markets came to dominate politics in Britain and the United States in the last quarter of the twentieth century....' (Jones, 2012:1)

The increasing belief that market forces are the only effective and valid metric of success has become normative over the period since 1979. Reiger (2021) noted the neoliberalism of Conservative governments after that date and their belief in the value of markets, identifying these traits with the conservative ethos:

'Thatcher and Major subscribed to a version of neoliberalism with profoundly conservative traits because not only was it predicated on a belief in the efficiency of markets, but it also affirmed fiscal discipline, individualism, self-dependence and hard work as key political and cultural virtues.' Rieger (2021)

Thatcherism itself has become a word suffused with a variety of meanings and concepts. Jackson and Saunders note that

'(Thatcherism was)... Originally a pejorative term, the word was coined by the Labour Party and theorised by the Marxist left, before being adopted as a badge of honour by Thatcher and her associates. It has been used as a receptacle for a dizzying array of ideas and never achieved a stable meaning, even among Thatcher's closest allies. Historians cannot simply abandon the word, for it was central to political discourse in the 1980s, but nor should they impose upon it a single, arbitrary definition. 'Thatcherism' should be viewed as a discourse to be

interrogated, not as an explanatory tool for the actions of the Thatcher governments.' (Jackson and Saunders 2012:12)

The parallels with the way in which the term 'neoliberal' has developed are obvious, and the encouragement to treat the word 'Thatcherism' as something to be interrogated rather than as an explanation applies equally to both terms.

Thatcherism contained in-built tensions, where contradictory strands of policy were sometimes resolved but on other occasions were allowed to co-exist (Thornley 1993). An example of the continuance of these tensions into subsequent administrations can be seen in the delays in producing various of the NPS defined under the Planning Act 2008, with those most likely to be subject to internal party-political pressures, such as the Airports NPS, being adopted much later than the relatively uncontentious network and energy NPSs. Other examples relate to the extension, or possible extension, of the PA 2008 examination and decision processes into 'fracking', geological nuclear waste storage and housing, all of which were subject of extended consultation and debate. Thornley noted that Thatcherism is not an ideology that valued discussion, local democracy, grass root or academic opinion: rules were set and criteria defined by central government. In some senses this approach could be said to be followed in the PA 2008 with planning criteria set out in NPSs and the decision process strictly defined in the wording of the Act and the regulations made under it.

These contradictions were again in evidence when a Conservative and Liberal Democrat coalition government passed the Localism Act 2011 which moved the Act's decision-making process back to the control of politicians, abolishing the IPC. The Labour government had produced IPC as part of the PA 2008, and also removed financial control of monetary policy from government control to an independent Bank of England (HoC 1998). The former was rescinded but the latter remains in place.

Commentators saw a continuation of neoliberalism in succeeding governments with an increasing emphasis on business models in the running of the state:

'... the utility of thinking of this brief history as one of neoliberalisation is equally straightforward: the normalization of market logics as the organizing principles of an activity; the replacement of a professional policy elite acting on some conception of a public interest with business leaders guided by principles of efficiency and "best value" and the clear stipulation of good and bad practice (often codified as "modern" versus "antiquated") accompanied by a disciplinary framework actively to punish non-compliance are all core traits of the neoliberal paradigm ... that can be found at the centre of the various reforms of English planning documented in this paper.' (Lord and Tewdwr-Jones, 2014:357)

The view was that neoliberalism held business methods superior to those of government and that this view was not peculiar to Conservative governments:

Some points in the record are clear, while others remain pending. Even if New Labour retained various social objectives, its priority was to pursue the creation of what Karl Polanyi called a "market society" ... that is, a society in which market principles guide and constrain the behaviour of organizations and individuals (Le Galès and Scott 2008).

Almost inevitably the elements that could be easily measured became important because progress could be measured and celebrated, or steps taken to improve areas where progress had not been made. In a business world, then,

'More weight is put on economic indicators of the effectiveness of the political-administrative management system compared to indicators measuring the democratic aspects of politics. The idea is that the market should discipline politics, which is contrary to the social-democratic view that politics should discipline the market ...' (Sager 2011:149)

'This is encouraged by new public management (NPM), which is a neo-liberal reform movement challenging the traditional political-administrative systems of Western democracies... . NPM's stress on devolution and decentralisation, as well as the subsequent need for coordination, has profoundly changed the central agencies and departments where many planners are working.' (Sager, 2011:153)

Thus the cultural environment in which the Act had its origins was one of an increasingly normative neoliberalism that impacted governments both Conservative and Labour, and influenced the way in which the government carried out its business. But the way in which neoliberalism showed itself was not always obvious and rarely consistent. As Peck has commented

'...if neoliberalism is a market-utopian ideal, rendered as a political destination, then the process of neoliberalisation, while it may take many forms, can never mean simple movement along some path towards deregulated freedom. On the contrary, in as far as neoliberalism 'survives,' it does so through continued mongrelisation. (Peck 2010:24)

In a similar vein, Mirowski declines to define neoliberalism as a static or coherent set of theories, ideas, principles and assumptions.

'Clearly , neoliberals do not navigate with a fixed static Utopia as the astrolabe for all their political strivings. They could not, since they don't even agree on such basic terms as 'market, and 'freedom' in all respects...' (Mirowski 2013:53)

But if there is such a thing as a guiding principle of neoliberalism it is probably contained in Harvey's definition:

'Neoliberalism is a theory of political economic practices that propose that human well-being can best be advanced by liberating individual entrepreneurial freedoms within an institutional framework characterised by strong private property rights, free markets and free trade. The role of

the state is to create and preserve an institutional framework appropriate to such practices.' (Harvey 2005:2)

It is certainly the case that these precepts were almost universally recognised in parliament and outside during the genesis of the PA 2008, and these sentiments will have helped to form the Act.

But that is not the full story: the Act is much more a practical response to the problems of defining exactly what information is required of project developers if their schemes are to be properly assessed for planning purposes. The Act defines the process to be used in that assessment and the timescales to be observed. To date, it has mainly delivered the objectives of those who sought a change in the previous consenting system for major infrastructure works, and the legislators who framed and executed those changes. It has been shown that the Act provides a method of assessing the suitability of NSIPs against criteria established by parliament within practical and temporal constraints acceptable to all parties involved with the process.

The PA 2008 has proved to be practical in its application, with 120 applications for DCOs under the Act having been decided by December 2022. While the professional users of the process see areas for improvement with some aspects of the system, there is general acceptance that the Act provides certainty of process in an area where this was lacking under previous arrangements. The removal of the IPC from the process and its replacement as decision-maker by a Secretary of State has generally worked well, although it may be that pressures to achieve departmental goals in the case of National Highways have resulted in a number of decisions that have been overturned by judicial review, the majority of these being cases where the Secretary of State has not followed the advice of the Examining Authority after the formal examination of the application. From this it is apparent that internal tensions within the processes of the Act remain, with the requirements to make decisions that are legal, in accordance with all international treaty obligations, and observing government environmental and energy conservation objectives being

balanced against practical and political imperatives by the decision-taker. The system of judicial review provides assurance that legal requirements and process have been properly observed, although the funding of judicial review proceedings for those who believe errors have been made remains problematic, as does the possibility that this remedy may be made less accessible by recent legislation in the form of the Judicial Review and Courts Act 2022 (Law Society 2022).

The fact that the scope of the Act has been extended to cover infrastructure elements not included in the original formulation (DBEIS 2018; 2019) indicates that the government considers the Act to be working in an acceptable manner, while planning and infrastructure practitioners appear generally satisfied with its provisions (Morphet and Clifford 2017). It can be concluded from this evidence that the Act provides an acceptable means of deciding if schemes for the provision of NSIPs should be granted DCOs.

While it has been demonstrated that the Act was not introduced as a neoliberal measure, and the analysis of the three 'indicators' of neoliberalism does not indicate overtly neoliberal effects, the Act came into being in a largely neoliberal environment and cannot entirely escape the conclusion that it enables the advance of other elements that contribute to the neoliberal agenda.

The answer, then, to the research question is that, while the Act can be seen to have some aspects that might be considered neoliberal traits, it is not an overtly neoliberal measure, especially after the changes occasioned by the Localism Act 2011 in abolishing the IPC. The Act is an enabler for every type of NSIP, irrespective of its ownership. It is based in part on established historic practice and provides a practical advance on previous arrangements in terms of certainty of application requirements and timescale for examination and decision. It is tinged with a little neoliberalism only, while providing a practical advance in consenting methods for NSIPs.

11.7 Future Research

This work points the way toward further research topics. Most of the literature relating to the PA 2008 dates from soon after its enactment. Only two papers (Marshall and Cowell 2016; Rydin et al 2015) make use of information gleaned from applications for DCOs under the Act so conclusions have been drawn from a relatively small data set, a set which has since grown substantially and would now allow for a more detailed and nuanced understanding of the impact of the Act. It would now be possible to review a significant number of decisions, allowing a more extensive analysis of its impacts on the approaches taken by project promoters and those affected by both the application process and the implementation of the consented projects. Clifford and Morphet (2023) have recently taken advantage of this reservoir of information.

A detailed analysis of the applications so far determined under the Act is yet to be undertaken. This could provide material for an assessment of the direction taken by the Act's procedures, the difficulties that have been encountered and the benefits and dis-benefits of its use identified.

A further area of investigation offers itself in the more detailed review of the parliamentary debates leading to the original legislation, carrying out a more detailed analysis of the contributions of individual member to gain a greater insight into their motives and concerns. While this approach may benefit those investigating the politics of the time it is unlikely to illuminate the path of further development of the planning process.

Section 6 of the PA 2008 requires an NPS to be reviewed when the relevant Secretary of State considers it necessary to do so. The first reviews under this requirement are now under way, with that for National Networks announced in July 2021 and that for energy in September 2021 (Hansard 2021). In the same month the government announced that it saw no reason to review the Airports NPS. With changes of legislation over time there will be pressure for reviews of NPS, and the debates over changes and the

ability of parliamentarians to maintain control over the content of these documents could be usefully investigated.

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Appendices

Appendix 1 The Planning Act 2008

It is not intended here to carry out a full description of the Planning Act 2008 (the Act) which runs to some 242 Clauses and 13 Schedules. However, a brief description of some of its main functions will be given to illustrate the process by which decisions on Nationally Significant Infrastructure Projects (NSIPs) are reached.

The Act provides a new means of consenting NSIPs outside of the traditional Town and Country Planning Act processes. Its basic premise is that Parliament should define the projects to be subject to the process and should also determine the policy against which each application should be judged.

The Act consists of 12 parts. These are listed below with a short explanation of the purpose and effect of each.

By June 2019 Parliament had made some 974 changes to the Act, some a matter of 'housekeeping' in that they dealt with minor changes in the way in which the Act is operated and managed, others that make substantial changes to the nature of the Act and to the scope and coverage of its operation. Where appropriate these changes will be noted in the following summary and review.

Part 1 The Infrastructure Planning Commission

The Act established the Infrastructure Planning Commission (IPC) which was to be responsible for the implementation and management of the examination process established by the Act. The Commissioners were to be appointed by the Secretary of State and the Chair was to appoint Commissioners to serve on panels (the Executive Authority) examining applications under the Act and decide the issues or make recommendations, as appropriate, for the case under consideration. This effectively removed

decisions on NSIPs entirely out of the hands of Government ministers and so outside the realm of party politics and parliamentary scrutiny. During debates on the Bill during its passage through the legislature the Conservative opposition, while generally supporting the measure, were adamant that decision making should remain subject to the political process and that this part of the Act would be amended when the opportunity arose. This was done in the Localism Act 2011 which was passed by the Coalition Government after the demise of the Brown Labour Government. However, this left all the modalities of the Act in place, abolishing the IPC, placing its management functions within a directorate of the Planning Inspectorate and placing decision making function in the hands of the relevant Secretary of State,

Possibly as a result of a combination of the financial crash of 2008 and the newness of the processes under the new Act, there was slow start to the implementation of the new procedures: only one development was consented under the original PA2008 regime. By December 2018, 155 developments had been subject to the process of which 72 had been decided, 4 were currently being examined and the remainder had not yet been accepted for examination. Concerns that political inputs might tend to militate against the original intentions of the Act to produce a certain and time limited process appear to be unfounded. The reasoning behind these concerns was laid out in the Barker Report (Barker 2006) and was the subject of discussion in debates and committee hearings during the passage of the Bill through the parliamentary processes.

The process operated by the Planning Inspectorate (PINS) means that all documentation relating to a project from its acceptance for examination to the decision of the Secretary of State is openly available on line. This includes the full application documents and any additions or updates, all the formal correspondence from PINS relating to the case including meeting agendas and details of site visits to be undertaken, correspondence from statutory consultees and interested parties (redacted as appropriate) and notes of public meetings in addition to sound recordings of those meetings. Using the PINS website it is possible to determine exactly the time taken for

each accepted application to be determined. A small number of decisions have been delayed as a result of 'purdah' rules constraining ministerial actions in the weeks leading up to general elections, and another decision (the Silvertown Tunnel scheme in East London) was delayed for further and current information on air quality to be supplied to the Secretary of State.

In only one instance has the advice of the Examining Authority has not been accepted by the decision taker and in this instance the decision was overturned following a Judicial Review. There have been a number of instances where some parts of the advice have not been accepted but these have all related to subsidiary issues and not to the main decision about granting a development consent order. There have also been cases where some parts of the wording of the recommended DCO has been changed by the Secretary of State but these have had more to do with updating legal forms than disagreement over the intent of the measure concerned.

Part 2 National Policy Statements

Section 5 of the PA 2008 defines National Policy Statements (NPS) and sets out what they may contain. It establishes that an NPS must be published by the Secretary of State who must also lay it before Parliament. This ensures that NPSs are firmly established as definitive legal statements of Government policy which cannot then be overturned or amended by the courts. This essentially removes recourse to the courts against decisions taken under the Act, since the Parliament, the highest court in the land, has already decided on the policy and procedure to be followed. The only appeal is to judicial review which will ensure that policy has been properly applied and that procedure has been followed correctly. This removes from the process the possibility (a reality at Sizewell B) of the same basic points of principle being argued out at each succeeding Public Inquiry.

National Policy Statements have now been produced for all of the areas of infrastructure development covered by the Act. This has been a somewhat

drawn out process, with the Airports NPS being sanctioned by Parliament in June 2018 and the NPS for Water Supply yet to be produced.

The Act also makes provision for the review of NPSs when the Secretary of State considers this to be appropriate although no reviews have as yet been produced despite the elapse of time and a changing technological environment for several types of NSIPs.

The energy NPSs are:

- NPS for Overarching Energy (EN-1)
- NPS for Fossil Fuels (EN-2)
- NPS for Renewable Energy (EN-3)
- NPS for Oil and Gas Supply and Storage (EN-4)
- NPS for Electricity Networks (EN-5)
- NPS for Nuclear Power (EN-6)

These were produced by the former Department of Energy and Climate Change (DECC), now the Department for Business, Energy and Industrial Strategy (BEIS). All six energy NPSs received designation by the then Secretary of State for Energy and Climate Change on 19th July 2011.

The transport NPSs are:

- NPS for Ports
- NPS for National Networks
- Airports NPS

These were produced by the Department for Transport. The NPS for Ports was designated on 26th January 2012, the NPS for National Networks on 14th January 2015 and the Airport NPS on 26th June 2018.

The water, waste water and waste NPSs are:

- NPS for Hazardous Waste
- NPS for Waste Water

- Draft NPS for Water Resources

These were produced by the Department for Environment, Food and Rural Affairs. The NPS for Hazardous Waste was published on 6th June 2013, the NPS for Waste Water on 9th February 2012. In late 2017 the Government consulted on a draft NPS for Water Resources and proposals to amend the definition of nationally significant water infrastructure. The consultation included proposals to change the types and sizes of new water supply infrastructure to be defined as ‘nationally significant’ in the Act. The Government states that the responses received will inform the development of the NPS for Water Resources and final proposals to amend the definitions in the Act. The Government intends to consult on a full draft of the NPS for Water Resources in 2018.

Table A.1 National Policy Statements: Designation and Review Dates

NPS	Number	Date Designated	Review Date
Overarching Energy	EN-1	19 th July 2011	2016
Fossil Fuels	EN-2	19 th July 2011	2016
Renewable Energy	EN-3	19 th July 2011	2016
Oil and Gas Supply and Storage	EN-4	19 th July 2011	2016
Electricity Networks	EN-5	19 th July 2011	2016
Nuclear Power	EN-6	19 th July 2011	2016
Ports		26 th Jan 2012	2017
National Networks		14 th Jan 2015	2020
Airports		26 th June 2018	2023
Hazardous Waste		26 th June 2013	2018
Waste Water		9 th Feb 2012	2017
Water Resources		Draft	
Geological Disposal Infrastructure		17 th Oct 2019	2024

Source <https://infrastructure.planninginspectorate.gov.uk/legislation-and-advice/national-policy-statements/> Accessed 23rd Feb 2021

Part 3 Nationally Significant Infrastructure Projects (NSIPs)

The Act (S14) defines categories of development to be caught by the Act as:

- energy;
- transport;
- water;
- waste water; and
- waste.

It also gives the Secretary of State powers to amend this list, to add a new type of project or vary or remove an existing type of project or make further provision, or amend or repeal existing provision, about the types of project which are, and are not, to be included in the list providing that the new type is a project for the carrying out of works in one or more of the original fields noted above.

The section also specifies that the new project must be within England or waters adjacent to England up to the seaward limits of the territorial sea or; in the case of a project for the carrying out of works in the field of energy, a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions.

The definition of most NSIPs give a lower bound to projects in terms of capacity above which it will be consented under PA2008 procedures. These include power generation and transmission, gas storage and transmission, ports, airports, waste facilities and water storage and transmission. Others are defined by classification (motorways and trunk roads) or the status of the operator (railways). The Act defines 16 types of development within the five categories in terms of size and geographic location and details the attributes that would enable each to qualify as a nationally significant infrastructure

project within the meaning of the Act. The exact definitions are set out in detail on the face of the Act and it is not intended to repeat these legally exact definitions here. The following is intended to give an overview of what is included in the various categories:

An energy project is defined as:

the construction or extension of a generating station in England and Wales if its capacity is greater than 50 megawatts, or of an offshore generating station in English or Welsh territorial sea if its capacity is greater than 100 megawatts;

the installation of electric lines above ground if they are in England or Wales or partly in both or, subject to certain conditions, partly in both England and Scotland and the nominal voltage of the line is not expected to be less than 132 kilovolts;

in England, the creation, commissioning or alteration, and in Wales the commissioning, of underground gas storage facilities provided the working capacity is expected to be at least 43 million standard cubic metres or the maximum flow rate is expected to be at least 4.5 million standard cubic metres per day or to increase by these amounts;

in England, the construction or alteration of LNG facilities (facilities for the reception of liquid natural gas from outside England together with its storage and regasification) where storage capacity is expected to be at least 43 million standard cubic metres or the maximum flow rate is expected to be at least 4.5 million standard cubic metres per day or to increase by these amounts;

in England, the construction or alteration of reception facilities for natural gas from outside England Wales or Scotland where the maximum flow rate is expected to be at least 4.5 standard million cubic metres per day or to increase by this amount;

the construction of gas transporter pipe-lines if wholly or partly in England, over 800mm in diameter and more than 40 kilometres in length, or likely to have a significant environmental effect during its construction, operating at

over 7 bar pressure and supplying at least 50,000 customers, potential or actual; and

the construction of other pipe-lines in England which are not gas transporter pipe-lines but which are of the same size.

A transport project is defined as:

The construction of a highway wholly in England for which the Secretary of State is the highway authority (that is, either a motorway or a trunk road);

the improvement of a highway wholly in England for which the Secretary of State is the highway authority and where the improvement is likely to have a significant effect on the environment;

the alteration of a highway wholly in England for which the Secretary of State is the highway authority if the alteration is for a purpose connected with a road for which the Secretary of State is the highway authority;

the construction, alteration or increase in capacity of an airport in England where passenger capacity will increase by at least 10 million per year or the air cargo capacity will increase by at least 10,000 movements per year;

the construction of harbour facilities in England or Wales or in territorial waters which increase handling capacity by at least 500,000 twenty foot equivalent units, or 250,000 units for roll-on, roll off ships, or 5million tonnes of general cargo;

the construction or alteration of a railway in England which will be part of a network operated by an approved operator; and

the construction in England of rail freight interchanges of at least 60 hectares in area and capable of handling at least four goods trains per day with more than one consignor and more than one consignee.

A water project is defined as:

the construction or alteration of a dam or reservoir in England by one or more water undertakers and with a capacity, or additional capacity, expected to exceed 10 million cubic metres; and

the development of water transfer facilities in England by one or more water undertakers where the volume of water to be transferred as a result of the development will exceed 100 million cubic metres per year.

A waste water project is defined as:

the construction or alteration of a waste water treatment plant in England with increased capacity exceeding a population equivalent of 50,000.

A waste project is defined as:

the construction or alteration of a hazardous waste facility in England, the main purpose of which is the final disposal or recovery of hazardous waste, and the capacity for the disposal of hazardous waste in landfill or in deep storage facilities will exceed 100,000 tonnes per year or, in other cases, 30,000 per year.

Part 4 Requirements for Development Consent

This part explicitly states that consent under the Act is required for any development or part of a development defined as an NSIP and goes on to define 'development.'

Applications for development consent under the Act remove from the applicant the necessity of applying for various consents under a range of other statutes including planning permission, green belt legislation, the Pipelines Act, the Gas Act, the Energy Act, the Ancient Monuments and Archaeological Areas Act, the Electricity Act and the Listed Buildings Act. The section confers power on the Secretary of State to direct that applications for consent under these other statutes should be treated as applications under the Act.

This is not a carte blanche derogation and other statutory consents are specifically referenced in the Act including those included in sections 10, 14, 16, 18, 106, 108 and 110 of the Highways Act 1980 and section 6 of the New Roads and Street Works Act 1991.

This section of the Act also clarifies that consent for NSIPs cannot be gained through the operation of other statutes, specifically the Harbours Act 1964, the Gas Act 1965 or the Transport and Works Act 1992. However, it includes a specific provision to include within the Act processes for the consenting of Welsh offshore generating stations.

Part 5 Applications for Orders Granting Development Consent

This part deals with the modalities of the application procedure under the Act, the pre-application procedure including the duty to publicise the proposed application, and the duty to consult with local authorities, local communities and individuals, and to take account of responses to these efforts.

The IPC (now the Planning Inspectorate) is permitted under certain circumstances to give advice to applicants providing that all interested parties are able to access this advice. It is also able to expedite the gathering of information about land ownership and rights to assist an applicant. It may also authorise access to land to enable survey work to be carried out in connection with the design of a scheme that is to be the subject of an application under the Act.

Part 6 Deciding Applications for Orders Granting Development Consent

This part sets out how the IPC (now the Planning Inspectorate) is to handle applications under the Act. It defines a period of 28 days from the day after the application is made within which a decision on acceptance is to be made. This decision is contingent on the applicant having followed the correct processes in terms of publicity, notification and consultation. It sets out how the panel to examine the application is to be appointed and how the panel

procedure is to be managed. It defines the examination process, with the decision about how to examine the application being placed in the hands of the 'Examining authority' (ExA), the individual examining inspector or panel of inspectors appointed by the Secretary of State.

The examination process starts with an initial assessment of the principal issues arising from the application as determined by the ExA and the holding of a preliminary meeting. The applicant and all interested parties must be invited to attend this meeting at which representations can be made about the conduct of the examination. This meeting is followed by the issue of a letter from the ExA detailing the procedure that is to be followed during the examination. The ExA will consider the written representation made about the application and make arrangements for a number of meetings to be held. The scale of these meetings will depend on the size and complexity of the application and the issues arising from it. An open floor hearing must be held if one or more interested parties wishes one to be held. These allow oral representations about the application to be made and, especially in the case of linear schemes, several may be necessary in order to give people along the route of the project opportunity to attend. Specific issue meetings may be held to ensure that an adequate examination of the issue can be made and that interested parties have a fair chance to make their case. Where the application includes a request for the use of compulsory acquisition processes, and one or more affected parties request a meeting, a specific compulsory acquisition hearing must be held.

The section contains provisions for the conduct of meetings. These are based on the examination of written material and oral evidence which may also be confirmed in writing. The conduct of the meetings is entirely in the hands of the ExA and none of the parties represented at the meetings has rights of cross examination, although this may be allowed if thought appropriate by the ExA. There is a provision for sanctions against anyone acting in a disruptive manner during a hearing, including exclusion from that and future hearings.

A timetable for the examination and reporting process is set out in this section. It allows six months for the completion of the examination and a further three months for the submission of a report to the Secretary of State giving the ExA's conclusions. A decision must be made within three months of the delivery of the report to the Secretary of State.

The report will usually be in the form of a decision which the Secretary of State may accept, reject or vary, but the ExA will take into account the list of considerations included in this section which must be taken into account by the Secretary of State in reaching a decision. These include any relevant NPSs, local impact reports from local authorities, any other matter considered important or relevant, the relation to international obligations, the possibility of breaching other obligations, its legality, and the balance of any adverse impacts of the development against its potential benefits. In reaching a decision, representations that are vexatious or frivolous, which relate to the merits of policy set out in an NPS or relate to compensation issues for compulsory acquisition of land interests may be disregarded.

The decision-making process may be suspended during a review of an NPS, while the Secretary of State may intervene if there are significant changes to the circumstances in which the application was made, including issues of defence and national security.

Once a decision is made the Secretary of State must prepare a statement giving the reasons for either refusing development consent or making an order granting development consent and this must be sent to all interested parties to the examination process. The part also sets out the form in which a grant of development consent must be made under the Statutory Instruments Act 1946.

The part sets out how legal challenges may be mounted. It admits only the remedy of judicial review and sets an application time limit of six weeks from the date of the publishing of the Order or the notice of refusal was made. This formulation of an application for judicial review within six weeks of an issue arising applies to any procedural defect which may become apparent.

Part 7 Orders Granting Development Consent

The part lists the purposes for which compulsory acquisition may be available and the land to which this may apply. It also details provisions for dealing with Crown land, public rights of way, statutory undertakers rights, common land, generating stations, over-ground electricity lines, underground gas storage, watercourses, highways, harbours, discharge of water, development of green belt land, deemed consents under the Coast Protection Act 1949 and the Food and Environment Protection Act 1985. However, it is not intended to describe here in detail or comment on the very complex details of the compulsory acquisition processes included in the Act.

Part 8 Enforcement

This part specifies offences that could be committed with regard to the operation of the Act. These are: carrying out development without a necessary development consent order in place; and, breaching the terms of an order granting development consent. It sets out rights of entry to land by the relevant local planning authority if there are reasonable grounds for suspecting that one of these offenses has been committed, either without a warrant or, if access has been denied, with the benefit of a warrant. It also details the operation of information notices that can be served in cases where an offence under this part of the act is thought to have been perpetrated. It details the powers of the local planning authority to take remedial actions if appropriate and to recover the cost of these works from the owner of the land. The local planning authority may also seek an injunction to restrain the illegal activity if it considers it expedient.

Part 9 Changes to Existing Planning Regimes

This part lists amendments to other legislation as a result of the implementation of the Act. These are related to planning obligations set out

in the Town and Country Planning Act 1990 and the treatment of blighted land included in the same legislation and in the Town and Country Planning (Scotland) Act 1997. It sets out the changes resulting in other existing planning regimes including regional planning bodies under the Planning and Compulsory Purchase Act 2004 and the Regional Development Agencies Act 1998. It also identifies changes in climate change and good design legislation and policies. It amends measures included in legislation with regard to the correction of errors, the power of the High Court to remit strategies, plans and documents and to remit unitary development plans in Wales. It addresses legislation on planning permission, compensation in connection with local development orders, non-material changes to planning permission, trees preservation orders, the power to override easements and other land rights, appeals by statutory undertakers and the determination of various types of proceedings under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990. It finally deals with fees for planning applications.

Part 10 Wales

This Part introduces reference to the Act into the Government of Wales Act 2006. It gives powers to the Welsh ministers to exercise the same powers in Wales as those enjoyed by the Secretary of State in England with regard to several of the areas defined in Part 9. It also allows for transitional arrangements to be put in place.

Part 11 Community Infrastructure Levy

This Part defines the nature and operation of the Community Infrastructure Levy (CIL). The CIL is a charge levied on development by a local authority as 'the charging authority.' The amount charged is to be set by the authority and the level must have regard to the costs of the infrastructure, the

economic viability of the development and its funding sources. The process set out in the act is complex and it is not intended to comment further on it here.

Part 12 Final Provisions

This Part ensures that the Act binds the crown given a number of exceptions detailed elsewhere in the Act. It defines 'Crown land' and 'the appropriate Crown authority', regulates the service of notices and the making of orders and regulations under the Act. It also gives a list of abbreviations and interpretations of terms used within the Act, provides for the Secretary of State to make supplementary and consequential provisions and details how the Act is to come into force.

Schedules

The 13 schedules to the Act provide greater detail of how the Act is to be put into practice.

Additional Legislation

Since the introduction of the Act a number of changes have been made to the consenting process for NSIPs either as a result of new legislation or as a result of changes within the Act itself. As noted above, the Localism Act 2011 abolished the IPC and installed the Secretary of State as the decision maker in all cases while maintaining in its entirety the processes established under the Act. The fact that this change took place so early in the life of the Act has meant that there has been little apparent change in the way in decisions are reached as a result of the changes.

A further change was brought about by the Growth and Infrastructure Act 2013. This was used by the Government to bring business and commercial

projects within the Act regime. It defined a new field from which NSIPs might be drawn: 'a business or commercial project (or proposed project) of a prescribed description.' However, in this case the Secretary of State can only direct that the project should be dealt with as an NSIP if the promotor of the scheme or the person intending to carry out the scheme makes a 'qualifying request' to him for the project to be dealt with under the Act. Major planning applications and reserved matters approvals relating to them are allowed to be made directly to the Secretary of State in those cases where the LPA has been designated as under-performing. Regulations define what a 'major' application is for these purposes but it is supposed that such applications would be dealt with under the Act process. After a consultation exercise in 2013 the Government concluded that developers of nationally significant projects should generally be able to use the nationally significant infrastructure planning regime if the development fell within one of the following categories:

- Offices and research and development
- Manufacturing and processing
- Warehousing, storage and distribution
- Conference and exhibition centres
- Leisure, tourism and sports and recreation
- Aggregate and industrial minerals

Other changes to legislation have made relatively small amendments to the coverage and administration of the Act:

- The Infrastructure Act 2015 enabled changes to the timing of the appointment of the Examining Authority, provided for Panels of two people and amended the process for changes to Development Consent Orders.
- The Housing and Planning Act 2016 allowed for an element of housing to be included as part of the development for which development consent may be granted.

- The Wales Act 2017 amended the Government of Wales Act 2006 by moving to a reserved powers model for Wales. It devolves powers to the Welsh Government for areas including consenting for new energy projects, shale gas production, marine licensing and harbours. The effect of these provisions is to dis-apply the Secretary of State's power under the Act to grant development consent for all electricity generating stations in Wales and in Welsh territorial waters for projects (not including onshore wind powered generating stations) not exceeding a capacity of 350MW, and for all onshore wind powered generating stations. It also allows for certain 'Associated Development' in Wales to be consented under the Act.

Consultations about further changes to the coverage of the Act are currently underway:

- The Government opened a consultation on early 2018 on a draft NPS for Geological Disposal Infrastructure. The consultation seeks views on whether the draft NPS provides an adequate framework to make decisions on development consent applications for geological disposal infrastructure in England. This is essentially an exercise to find an acceptable site for the safe disposal of low level nuclear waste. An NPS was designated in October 2019;
- In 2018 an initial consultation on the inclusion of shale gas production in the Nationally Significant Infrastructure Projects regime was carried out by Government. This would only apply to production projects only, and not exploration or appraisals which would continue to be considered under the Town and Country Planning Act 1990. This appears to be a means of removing, at least in part, from the TCPA process the consenting regime for what has become a highly sensitive area of development and the subject of much protest. It would place it in what has come to be considered the more certain and manageable realms of the Act processes. The date at which the result of this consultation will be published has not yet been announced and government policy now appears to be less encouraging to the concept

of shale gas exploitation to the extent that it is unlikely that a relevant NPS will be published.

Appendix 2 Planning Legislation 1900 - 2022

List of Statutes

Housing, Town Planning, etc. Act 1909, c.44
Housing, Town Planning etc. Act 1919, c.35
Town Planning Act 1925, c.16
Town and Country Planning Act 1932, c.48
Restriction of Ribbon Development Act 1935, c.47
Minister of Town and Country Planning Act 1943, c.5
Town and Country Planning Act 1947, c.51
Town and Country Planning Act 1953, c.16
Town and Country Planning Act 1954, c.72
Town and Country Planning Act 1959, c.53
Town and Country Planning Act 1962, c.38
Town and Country Planning Act 1963 c.17
Town and Country Planning Act 1968, c.72
Town and Country Planning (Amendment) Act 1972, c.42
Town and Country Planning (Amendment) Act 1977, c.29
Local Government Planning and Land Act 1980, c.65
Town and Country Planning (Minerals) Act 1981, c.36
Local Government and Planning (Amendment) Act 1981, c.41
Town and Country Planning Act 1984, c.10
Town and Country Planning (Compensation) Act 1985, c.19
Town and Country Planning (Amendment) Act 1985, c.52
Housing and Planning Act 1986, c.63
Town and Country Planning Act 1990, c.8
Planning (Listed Buildings and Conservation Areas) Act 1990, c.9
Planning (Hazardous Substances) Act 1990, c.10
Planning (Consequential Provisions) Act 1990, c.11
Planning and Compensation Act 1991, c.34

Town and Country Planning (Cost of Inquiries etc.) Act 1995, c.49

Town and Country Planning Act (Scotland) Act 1997, c.8

Planning and Compulsory Purchase Act 2004, c.5

Town and Country Planning Act (Scotland) Act 2006, c.17

Planning-gain Supplement (Preparations) Act 2007, c.2

Planning and Energy Act 2008, c.21

Planning Act 2008, c.29

Planning Act (Northern Ireland) 2011, c.25

Planning (Wales) Act 2015, c.4

Housing and Planning Act 2016, c.22

Town and Country Planning Act (Scotland) Act 2019, c.13

Notes on Planning Legislation 1979 - 2022

Thatcher administrations 1979 – 1990; eleven measures:

Local Government Planning and Land Act 1980 c.65

in 19 parts, 197 Sections and 34 Schedules, mainly dealing with local authority issues: Direct Labour Organisations, rates, rates support grants, new towns, urban development and caravan sites. Part 9 dealt with town and country planning, with S86 moving responsibility for many planning matters from County authorities to district councils, S87 dealing with planning fees, S88, local plan procedures, S89, surveys and plans, S90, detailed changes as set out in Schedule 15 of the act, S91, changes to compulsory acquisition procedures and S92, the application of the act to Scotland.

Local Government and Planning (Amendment) Act 1981 c.41

in 28 Sections to provide for control over listed buildings and for the enforcement of planning controls.

Town and Country Planning (Minerals) Act 1981 c.36

in 32 Sections and two schedules, dealing purely with the abstraction of minerals in England, Wales and Scotland.

Town and Country Planning Act 1984 c.10

in seven Sections dealing with the treatment of crown land under the TCPA and the widening of the appeals procedures.

Town and Country Planning (Amendment) Act 1985 c.52

in three Sections extending tree preservation order protections to woodland trees.

Town and Country Planning (Compensation) Act 1985 c.19

repealed 1997, in three sections restricting compensation to property owners in some special circumstances.

Housing and Planning Act 1986 c.63

in seven Parts, 56 Sections and 12 Schedules dealing with the rights of council tenants to purchase the property, simplified planning zones, hazardous waste and consents for opencast coal extraction.

Town and Country Planning Act 1990 c.8

in 15 Parts, 337 Sections and 17 Schedules dealing with the constitution of planning authorities, unitary development plans, structure and local plans, development control, compensation, owners' rights, blight, enforcement, trees and advertisements, land acquisition, highways, statutory undertakers, validity, crown land and financial provisions.

Planning (Listed Buildings and Conservation Areas) Act 1990 c.9

dealing with the listing and preservation of buildings and conservation areas.

Planning (Hazardous Substances) Act 1990 c.10

to consolidate measures relating to hazardous substances.

Planning (Consequential Provisions) Act 1990 c.11

a 'housekeeping' measure following on from the three other 1990 planning acts.

Major administrations 1990 – 1997; three measures:

Planning and Compensation Act 1991 c.34

dealing with compulsory acquisition of land and compensation for loss, including losses caused by statutory undertakers' works.

Transport and Works Act 1992 c.42

to give Parliament the power to make orders for the construction and operation of railways, tramways, trolley vehicle systems, guided transport systems and inland waterways, and to amend legislation relating to harbours.

Town and Country Planning (Cost of Inquiries etc.) Act 1995 c.49

regularising the payment of expenses incurred by local authorities in holding public inquiries required by government ministers.

Blair and Brown administrations 1997 – 2010; four measures:

Planning and Compulsory Purchase Act 2004 c.5

dealing with spatial development, town and country planning and compulsory acquisition.

Planning-gain Supplement (Preparations) Act 2007 c.2

to allow spending to prepare for a tax on the increase in the value of land following development consent.

Planning Act 2008 c.29

the Act under consideration in this work.

Planning and Energy Act 2008 c.21

enabling local planning authorities to set requirements for energy use and efficiency in local plans.

Cameron administrations 2010 – 2016; five measures:

Localism Act 2011 c.20

of ten Parts, 241 Sections and 25 Schedules dealing with local government, European Union sanctions, non-domestic rates, community empowerment, housing, special powers for local government in London and planning; this last Part at Chapter 6 dealing with nationally significant infrastructure

projects and abolishing the Infrastructure Planning Commission established under the PA 2008.

Infrastructure (Financial Assistance) Act 2012 c.16

to allow financial assistance for the provision of infrastructure.

Growth and Infrastructure Act 2013 c.27

dealing with rating lists, employee shareholders, and the provision or use of infrastructure. It was mainly a 'housekeeping' exercise to eradicate anomalies from the PA 2008 and other legislation.

Infrastructure Act 2015 c.7

dealing with strategic highway companies, cycling and walking investment strategies, British Transport police, invasive species, energy, public works and planning; this last part contains minor amendments to facilitate the smoother operation of the PA 2008.

Housing and Planning Act 2016 c.22

in nine Parts, 217 sections and 20 Schedules dealing with starter homes, rogue landlords, social housing, housing, estate agents and rent charges, compulsory purchase, public authority land, and planning. The Part dealing with planning consists of 33 Sections and addresses among other matters, neighbourhood and local planning. A single Section, 160, extends PA 2008 powers to include housing related to a nationally significant infrastructure project.

May, Johnson, Truss, Sunak 2016 – 2022

Appendix 3 ‘Infrastructure Delivery: The DCO Process in Context – Main Report’, National Infrastructure Planning Association Morphet and Clifford 2017

Precis and Recommendations

Morphet and Clifford (2017) carried an analysis of the Act for the National Infrastructure Planning Association (NIPA) under the auspices of the Bartlett School of Planning, but this dealt purely with the modalities of the Development Consent Order (DCO) process and, despite its distinguished authors, cannot be described as an academic work in the usual sense. NIPA is a professional membership interest organisation consisting mainly of those who practice as planners, lawyers, barristers, consulting engineers and environmentalist and who are involved in projects which fall within the ambit of the PA 2008. It is not an academic body and the remit it presented to the writers in procuring this work was:

‘Does the Planning Act process deliver the certainty and flexibility necessary to attract investment, permit innovation during the design and construction process and support cost effective infrastructure delivery – whilst providing appropriate protection of affected landowners and communities?’ (Morphet and Clifford, 2017:6)

The authors were not asked to address the cost effectiveness of the individual projects themselves, only of the delivery process in terms of certainty, flexibility and their ability to attract investment. The work is a report with recommendations, especially with regard to the need for more flexibility in the DCO process and the role of detail and flexibility in deliverability. The authors conclude that the PA 2008 process has broadly been welcomed by those who have been involved with it. However, it is apparent from the list of participants given in the technical report on the investigation (Morphet and Clifford 2017, Appendices F and G) that input to their review came almost entirely from organisations promoting infrastructure

schemes or providing consultancy services to them. Included in the list of 35 interviewees were eight Planning Inspectorate staff or civil servants, seven statutory consultees, seven project promoters' staff, four local government officers, three consultants, three lawyers, two contractors and a single land owners' representative. Focus groups for contractors / implementers, civil servants, lawyers / consultants were used, together with a community group drawn from one particular scheme consisting of four people from 'parish councils and civil society organisations.' Given the remit of the study the complete lack of community involvement in the interview process is surprising as there are very limited inputs into the focus group process from this source. The lack of inputs from individuals caught up in the process is understandable given the remit of the study, although this does include the requirement to consider the Act's impact on affected landowners and communities. Its approach does, however, fail to address directly the question of how the Act impacts individuals who become involved with this type of project either because they have an interest in property affected by a project or for other reasons.

The authors note strong support from promoters and those responsible for project delivery for the time-tabled approach and the consequent certainty about the timing of the eventual decision. Also welcomed is the certainty provided by NPSs and the reduction in risk to promoters provided by the opportunity to discuss the project submission with the Planning Inspectorate (PINS) through the pre-application process. These, together with mandatory consultations with affected communities, with their adequacy verified by the relevant local authority, and the specification of environmental impact assessments, are held to improve the transparency of the process. The use of inquisitorial examinations is felt to be more productive than the adversarial approach used under Town and Country Planning act processes (Morphet and Clifford 2017: 8 and 16) as is the ability to use compulsory acquisition arrangements and to incorporate the complete range of necessary regulatory consents within a single DCO. They note that during the inquisitorial examination the examiners investigate a range of issues that they consider to be important in the application, that may need further investigation or the

provision of a more detailed and developed design solution. This approach is beneficial to all parties in allowing the examining inspectors to understand the scheme properly and thus to be able to make a properly founded recommendation.

The report contains seventeen recommendations that deal with the need for deliverability and flexibility in the PA 2008 process, with defined time scales for dealing with non-material matters, the use of early contractor involvement and the continuity of project management, the early involvement of both statutory consultees and communities in providing flexibility, an independent recipient of questions and complaints during project delivery, the need for environmental impact assessments to be wide enough to allow for flexibility which should be a consideration at every stage of the process, and the capture of learning from projects for use in training and for future projects. The full list recommendations is included at Appendix 2.

Morphet and Clifford's work provides validation of the benefits of the PA 2008 process for those involved in the procurement of NSIPs and identifies areas for future improvements to the process which could be implemented by means of secondary legislation if the government so wished. It also illustrates by default that the impact of the new process on others involved with it, particularly as a result of their interest in property affected by an NSIP project, has not yet been fully explored.

1. National Policy Statements should address deliverability;
2. government guidance and advice on flexibility and deliverability should be brought together;
3. the Government should put non-material amendments into a statutory time frame to support NSIP flexibility and deliverability;
4. promoters should consider some form of Early Contractor Involvement (ECI) in the development and pre-application processes for their projects to address the need for detail and flexibility;

5. all promoters should appoint a project management capability for the whole project from the outset to ensure flexibility and deliverability are addressed as it progresses to operational completion;
6. statutory consultees should engage at the pre-application phase and consider developing standards and advice to support delivery;
7. promoters should engage in meaningful dialogue with the community to reflect their requirements for detail and support the required flexibility in delivery;
8. to support flexibility, an independent person should be appointed to receive community questions and complaints during the delivery phase;
9. promoters and their advisers should consider their approach to environmental assessment and consider a risk assessment of the potential outcome for achieving flexibility in the DCO;
10. DCO drafting should address flexibility for deliverability as a core component;
11. to support flexibility of NSIP schemes in delivery and construction, careful consideration must be given to the framing of the DCO requirements. There is a need for greater cross-sectoral understanding of how requirements are worded, and how best to make use of the range of codes such as those for construction, design, sustainability and community engagement should be included within the DCO;
12. considering flexibility for deliverability during the examination;
13. reduce the amount of behind the scenes detailed negotiation during the examination phase by considering flexibility overall;
14. local authorities should have Planning Performance Agreements with the promoters from the outset to support requirements for detail and flexibility in delivery;
15. that PINS and NIPA should further review processes of the discharge of requirements as part of project flexibility;

16. NIPA should disseminate the learning from individual NSIP projects to improve practice in achieving flexibility to support deliverability; and

17. NIPA should undertake more dissemination and training on the application of appropriate detail and flexibility in the delivery of NSIP projects.

Appendix 4 Sample Letter to Prospective Interviewees and Potential Interview Questions

Dear

I am currently a post-graduate student at Cardiff University writing a doctoral thesis with a working title of 'The Planning Act 2008 – Neoliberal Advance or Practical Planning?', my interest in the topic arising from work as an Examining Inspector for the Planning Inspectorate involved in a number of Examinations under the Act prior to my retirement.

As part of my investigation into the origins of the Act and its future development I am undertaking a series of interviews with people who have been part of the genesis and operation of the Act and who may influence future legislation involving, or based on, its processes. I have been fortunate, so far, to have enjoyed interviews with Sir John Armit and Dame Kate Barker among others. Your involvement with the presentation of oral evidence during the committee stage of the Planning Bill's passage through Parliament and your distinguished leadership of the CBI over many years make you an obvious and eminently qualified target for my attentions!

My object would be to carry out a semi-structured interview, using a basis of pre-submitted questions but moving beyond these as the flow of the interview develops. It would last no more than an hour and, if you are agreeable, would be recorded. It would obviously be my intention to use material from these interviews in my thesis as appropriate and this could be anonymised if you deemed this necessary. The location, time and other arrangements for the interview would be entirely to suit your convenience, although I would prefer a face-to-face interview if this is possible at some stage in the Summer months. I should add that my proposal for this approach has been approved by my School Ethics Committee.

I realise that you will have very many calls on your time, but I hope that you will be able to spare me a little of it in order to assist my research project. I give my contact details below.

Yours sincerely,

R G P Rees MSc, CEng, FICE, FCIHT

The Planning Act 2008: An Investigation Into Its Historical And Neoliberal Origins

Interview Questions

A Academics

What do you understand by neoliberalism?

Is the PA 2008 a neoliberal measure?

Is the PA 2008 a centralising measure?

Is the PA 2008 a deregulating measure?

Does the PA 2008 provide support for competition?

Does the PA 2008 support and enhance the democratic process?

How else would you characterise the Act?

Has the PA 2008 improved the problems it was intended to address?

Are there other areas into which the Act's processes might be introduced?

B Practitioners

Is the PA 2008 an improvement over previous arrangements?

If so, in what way?

How could it be improved?

Are there other areas into which the Act's processes might be introduced?

What are the disadvantages of the PA 2008 process?

Has the reintroduction of the SoS as decision maker reduced the effectiveness of the PA 2008 process?

Does the Act make it easier to deal with objectors?

C Politicians

What difficulties was the PA2008 intended to address?

Has the PA 2008 resolved the difficulties it was intended to address?

Has the PA 2008 introduced any additional difficulties into the planning process?

Are there any other areas where the processes of the PA 2008 might usefully be deployed?

Does the PA 2008 increase the role of public participation in the planning process?

Does the process of establishing National Planning Statements receive the appropriate level of public input and parliamentary scrutiny?

Is the PA 2008 process better, in terms of public accessibility and involvement, than the Private Bill procedure for major infrastructure projects?

Appendix 5 List of Invited Interviewees

Accepted

Prof. Phil Allmendinger

Sir John Armit

Dame Kate Barker

Dr. Ben Clifford

Prof. Tim Marshall

Prof. Janice Morphet

Prof. Mark Tewdwr-Jones

Declined

Lord Andrew Adonis

No Response

Hazel Blears

Sir Rod Eddington

Lord Eric Pickles

Appendix 6 School of Geography and Planning Ethics Committee Submission and Approval

CARDIFF UNIVERSITY SCHOOL OF GEOGRAPHY AND PLANNING

Ethical Approval Form

Staff and MPhil/PhD Projects

ALL FORMS FOR ETHICAL APPROVAL MUST BE SUBMITTED TO THE SECRETARY OF THE SCHOOL ETHICS COMMITTEE AT LEAST 2 WEEKS BEFORE YOU INTEND TO START DATA COLLECTION.

An electronic version must to emailed to Ethan Lumb, Secretary of Ethics Committee LumbE@cardiff.ac.uk, bearing relevant staff and/or PGR Student signatures.

Title of Project	<i>PhD Thesis 'The Planning Act 2008 – Neoliberal Advance or Practical Planning?'</i>
Name of Researcher(s)	<i>Richard Rees</i>
Proposed Dates of Field Work	<i>October 2019 –April 2020</i>
	Student Project (delete as appropriate)
Date:	<i>1st August 2019</i>
Signature of Lead Researcher	<i>R G P Rees</i>

Research Project Summary

If your research raises any ethical concerns, please provide sufficient detail here to allow the committee to fully assess your application.

Please provide a concise, general description of your research project (<200 words).

An investigation into the background, origins and intentions of the Planning Act 2008 (the Act) which provided a new process for the consenting of major infrastructure projects in England and, in some cases, Wales. It will consider the history of infrastructure planning in England and locate the Act in its historical context. It will review the impact of neoliberal thought on the development of the Act and in both these contexts review changes to the Act in subsequent legislation.

What are the research aims, objectives and/or questions?

It is intended to carry out structured interviews with a variety of major players in the development and application of the Act in order to identify the original intentions of the legislators and to gauge the reaction of industry leaders and academics to the subsequent operation of the Act.

Who are the proposed research participants?

See provisional list below.

Possible Interviewees (wip)			
	Name	Past	Present
1	Kate Barker	Author of the Barker Review of Land Use Planning 2006	Member of the National Infrastructure Commission
2	Janice Morphet	Co-author of NIPA report 'Infrastructure Delivery: The DCO process in context'	Visiting Professor UCL

3	Paul Hudson	Government Chief Planner 2006 - 10	Retired PINS Examining Inspector
4	Pauleen Lane	Senior Examining Inspector PINS	Group Manager National Infrastructure PINS
5	Andrew Adonis	Chairman National Infrastructure Commission 2015 - 17	House of Lords
6	Alun Cairns		Secretary of State for Wales
7	John Armit	President ICE 2015 -16 Chairman of the Olympic Delivery Authority 2007 -12	Chairman National Infrastructure Commission 2017 -
8	Tim Marshall	Oxford Brookes	Emeritus Professor Oxford Brookes
9	Mark Tewdwr- Jones		Professor of Town Planning Newcastle
10	Phil Allmendinger		Professor of Land Economy Cambridge
11	Andrew Wyllie	Chief Executive Costain Group	President Institution of Civil Engineers 2018 -19
12	Angus Walker	Partner Bircham Dyson Bell	Chairman NIPA
13	Ian Tant or current President	Senior Partner Barton Willmore	President RTPI 2019
14	Kit Malthouse Now Esther McVey?	London Deputy Mayor Business and Enterprise	Minister of State for Housing and Planning

How will the participants be recruited? Individually, by means of a personal invitation.
What methods will you be using? Structured Interviews.
Where are you undertaking this research? At the interviewees offices, or some other location by agreement.
Funding source Self funded

Recruitment Procedures		Yes	No	N/A
1	Does your project include children under 18 years of age?		√	
2	Have you read the Child Protection Procedures below?			√
3	Does your project include people with learning or communication difficulties?		√	
4	Does your project include people in custody?		√	
5	Is your project likely to include people involved in illegal activities?		√	
6	Does your project involve people belonging to a vulnerable group, other than those listed above?		√	
7	Does your project include people who are, or are likely to become your clients or clients of the department in which you work?		√	
8	Does your project include people for whom English / Welsh is not their first language?		√	

*** Cardiff University's Child Protection Procedures:**

<http://www.cardiff.ac.uk/govrn/cocom/resources/2010%20November%20Safeguarding%20Children%20&%20VA's.doc>

If you have answered 'yes' to any of the above questions please outline (in an attached ethics statement) how you intend to deal with the ethical issues involved.

Data Protection		Yes	No	N/A
9	Will you tell participants that their participation is voluntary?	√		
10	Will you obtain written consent for participation? If "No" please explain how you will be getting informed consent.	√		
11	If the research is observational, will you ask participants for their consent to being observed?			√
12	Will you tell participants that they may withdraw from the research at any time and for any reasons?	√		
13	Will you give potential participants a significant period of time to consider participation?	√		

If you have answered 'no' to any of these questions please explain (in your Ethics Statement) the reasons for your decision and how you intend to deal with any ethical decisions involved.

Possible Harm to Participants		Yes	No	N/A
14	Is there any realistic risk of any participants experiencing either physical or psychological distress or discomfort?		√	
15	Is there any realistic risk of any participants experiencing a detriment to their interests as a result of participation?		√	

If there are any risks to the participants you must explain in your Ethics Statement (below) how you intend to minimise these risks.

Data Protection	Yes	No	N/A

16	Have you read the Data Protection Act Guidelines below?	√		
17	Will you keep all data securely during any travel?	√		
18	Will any non-anonymised and/or personalised data be generated and/or stored?	√		
19	Will you have access to documents containing sensitive ³ data about living individuals?		√	
	If "Yes" will you gain the consent of the individuals concerned?			

*** Data protection Act Guidelines:**

<http://www.cardiff.ac.uk/socsi/research/researchethics/>

If there are any other potential ethical issues that you think the Committee should consider please explain them in the Ethics Statement (below). It is your obligation to bring to the attention of the Committee any ethical issues not covered on this form.

Health and Safety	Yes	No	N/A
Does the research meet the requirements of the University's Health & Safety policies? http://www.cf.ac.uk/osheu/index.html	√		
Does your study include the use of a drug?		√	
If yes, you will need to contact Research Governance before submission (resgov@cf.ac.uk).			
Does the study involve the collection or use of human tissue (including, but not limited to, blood, saliva and bodily waste fluids)?		√	
If yes, a copy of the submitted application form and any supporting documentation must be emailed to the Human Tissue Act Compliance Team (HTA@cf.ac.uk). A decision will only be made once these documents have been received.			

Risk Assessment	Yes	No
<p>Has the relevant risk assessment form been completed?</p> <p>Research abroad, complete: \\Geoplpool1\geopl\SHARED\05 - RESEARCH\ETHICS\SREC Forms & guidance\SREC Risk Assessment Forms\RA_Abroad_Example.doc</p> <p>Research in the UK, complete: \\Geoplpool1\geopl\SHARED\05 - RESEARCH\ETHICS\SREC Forms & guidance\SREC Risk Assessment Forms\RA_UK_Example.doc</p> <p>Research on campus, complete: \\Geoplpool1\geopl\SHARED\05 - RESEARCH\ETHICS\SREC Forms & guidance\SREC Risk Assessment Forms\RA_Campus_Example.doc</p> <p>If yes, ensure a copy is submitted with the completed application</p>	√	
<p>If no, explain why a risk assessment form is not necessary:</p>		

Any changes to the nature of the project that result in the project being significantly different to that originally approved by the committee must be communicated to the Ethics Committee immediately.

Ethics Statement

If your answers to questions 1-17 raise any ethical issues, please explain here how you will deal with them in detail, providing more specific details on your methods, data collection and publication strategy.



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Date: 16/09/2019

Dear Richard Rees,

The School of Geography and Planning Ethics Committee has approved your research titled 'The Planning Act 2008 - Neoliberal advance or practical planning?'. This application has been approved by the School of Geography and Planning Ethics Committee on 19th August 2019.

Yours Sincerely



Ethan Lumb

Ethics Committee Secretary

Appendix 7 Planning Bill 2008

Analysis of Parliamentary Debates and Secondary legislation etc.

Full Tables

For the sake of clarity and completeness all tables from Chapter 6 have been included in this Appendix.

**Table 6.1 House of Commons
Second Reading Debate
Themes**

Theme	Ref'nces	Ranking	% of Total	% without CIL
Democratic accountability	37	1	13.6	14.7
IPC	35	2	12.8	13.9
NPS	30	3	11.0	12.0
Consultation	24	4	8.8	9.6
CIL	22	5	8.1	
Airports and airports NPS	12	6	4.4	4.8
Climate change / low carbon	9	7	3.3	3.6
Housing	8	8	2.9	3.2
Section 106 agreements	7	9	2.6	2.8
Parliamentary process	7	9	2.6	2.8
Permitted development	7	9	2.6	2.8
Wind power /renewables	7	9	2.6	2.8
Scotland and Wales	7	9	2.6	2.8
Environment	6	14	2.2	2.4
Nuclear	5	15	1.8	2.0
Sustainability	5	15	1.8	2.0
Need for reform	4	17	1.5	1.6
Efficiency	4	17	1.5	1.6
NSIPs	4	17	1.5	1.6
Private and Hybrid Bills	4	17	1.5	1.6
Single Consent	4	17	1.5	1.6
Funding for participants	3	22	1.1	1.2
TPOs	3	22	1.1	1.2
Conservation	3	22	1.1	1.2
Ports	2	25	0.7	0.8
Participation	2	25	0.7	0.8
Green Belt	2	25	0.7	0.8
Motorways	1	28	0.4	0.4
Overhead lines	1	28	0.4	0.4
Landscape	1	28	0.4	0.4
PINS	1	28	0.4	0.4
Regional planning	1	28	0.4	0.4
Property rights	1	28	0.4	0.4
Criminal law	1	28	0.4	0.4
Private property	1	28	0.4	0.4
Centralisation	1	28	0.4	0.4
Business Empathy and orientation	1	28	0.4	0.4

**Table 6.2 House of Commons
Second Reading Debate
Origins of References**

Theme	Speech	Question	Response	Total
Democratic accountability	17	11	9	37
IPC	16	11	8	35
NPS	14	8	8	30
Consultation	12	6	6	24
CIL	14	9	9	22
Airports and airports NPS	4	4	4	12
Climate change / low carbon	5	2	2	9
Housing	1	4	3	8
Section 106 agreements	5	1	1	7
Parliamentary process	1	3	3	7
Permitted development	5	1	1	7
Wind power /renewables	3	2	2	7
Scotland and Wales	1	3	3	7
Environment	6	0	0	6
Nuclear	1	2	2	5
Sustainability	3	1	1	5
Need for reform	2	1	1	4
Efficiency	2	1	1	4
NSIPs	2	1	1	4
Private and Hybrid Bills	2	1	1	4
Single Consent	3	1	0	4
Funding for participants	1	1	1	3
TPOs	1	1	1	3
Conservation	1	1	1	3
Ports	0	1	1	2
Participation	2	0	0	2
Green Belt	0	1	1	2
Motorways	0	1	0	1
Overhead lines	0	1	0	1
Landscape	0	1	0	1
PINS	1	0	0	1
Regional planning	1	0	0	1
Property rights	1	0	0	1
Criminal law	1	0	0	1
Private property	1	0	0	1
Centralisation	1	0	0	1
Business Empathy and orientation	1	0	0	1

**Table 6.3 House of Commons
Committee Stage - Oral Hearings
Ranking of Themes**

Theme	Ref'nces	Ranking	% of Total	% without CIL
IPC	168	1	13.3	14.3
NPS	151	2	12.0	12.8
Consultation	105	3	8.3	8.9
CIL	82	4	6.5	
NSIPs	66	5	5.2	5.6
Environment	66	5	5.2	5.6
Sustainability	66	5	5.2	5.6
Nuclear	65	8	5.2	5.5
Climate change, low carbon	63	9	5.0	5.4
Housing	52	10	4.1	4.4
Ports	48	11	3.8	4.1
Scotland, Wales	46	12	3.7	3.9
Planning Inspectorate	46	12	3.7	3.9
Wind power, renewables	45	14	3.6	3.8
Single consents	37	15	2.9	3.1
Section 106	36	16	2.9	3.1
Democratic accountability	28	17	2.2	2.4
Regional planning	23	18	2.0	1.4
Need for reform	17	19	1.4	1.4
Airports	9	20	0.7	0.8
Participation	9	20	0.7	0.8
Planning efficiency	6	22	0.5	0.5
Funding for participants	5	23	0.4	0.4
Transmission lines	4	24	0.3	0.3
Parliamentary process	4	24	0.3	0.3
Permitted development	3	26	0.2	0.3
Green belt	3	26	0.2	0.3
Motorways	2	28	0.2	0.2
Landscape	1	29	0.1	0.1
Private / hybrid Bills	1	29	0.1	0.1
Conservation	1	29	0.1	0.1
Centralisation	1	29	0.1	0.1
Business Empathy and orientation	0	33	0	0
TPOs	0	33	0	0
Property rights	0	33	0	0
Criminal law	0	33	0	0
Private property	0	33	0	0

**Table 6.4 House of Commons Committee Stage
Business Sessions
Ranking of Themes**

Theme	Ref'nces	Ranking	% of Total	% without CIL
NPS	473	1	15.1	16.3
IPC	451	2	14.4	15.5
Consultation	422	3	13.5	14.5
CIL	226	4	7.2	
Scotland /Wales	186	5	5.9	6.4
NSIPs	127	6	4.1	4.4
Democratic accountability	112	7	3.6	3.9
Housing	107	8	3.4	3.7
Nuclear	102	9	3.3	3.5
Planning inspectorate	92	10	2.9	3.2
Parliamentary process	87	11	2.8	3.0
Single consent	83	12	2.6	2.9
Environment	75	13	2.4	2.6
Sustainability	68	14	2.2	2.3
Section 106 agreements	59	15	1.9	2.0
Green belt	51	16	1.6	1.8
Climate change, low carbon	45	17	1.4	1.5
Permitted development	42	18	1.3	1.4
Conservation	38	19	1.2	1.3
Wind power / renewables	37	20	1.2	1.3
Regional planning	36	21	1.1	1.2
Ports	36	21	1.1	1.2
Airports	36	21	1.1	1.2
Motorways	36	21	1.1	1.2
Tree Preservation Orders	25	25	0.8	0.9
Participation	13	26	0.4	0.4
Property rights	11	27	0.4	0.4
Need for reform	10	28	0.3	0.3
Planning efficiency	10	28	0.3	0.3
Transmission lines	10	28	0.3	0.3
Private / hybrid Bills	9	31	0.3	0.3
Criminal law	9	31	0.3	0.3
Landscapes	3	33	0.1	0.1
Centralisation	3	33	0.1	0.1
Private property	3	33	0.1	0.1
Funding for participants	0	36	0	0
Business Empathy and orientation	0	36	0	0

**Table 6.5 House of Commons Committee Stage
Written Submissions
Ranking of Themes**

Theme	Ref'nces	Ranking	% of Total	% without CIL
CIL	218	1	15.1	
NPS	151	2	10.4	12.4
IPC	134	3	9.3	11.0
Environment	112	4	7.7	9.2
Housing	99	5	6.8	8.1
Climate change, low carbon	98	6	6.8	8.0
NSIPs	97	7	6.7	7.9
Sustainability	92	8	6.4	7.5
Consultation	76	9	5.3	6.2
Democratic accountability	48	10	3.3	3.9
Regional planning	36	11	2.5	2.9
Need for reform	36	11	2.5	2.9
Ports	32	13	2.2	2.6
Single consent	30	14	2.1	2.4
Section 106 agreements	28	15	1.9	2.3
Planning inspectorate	25	16	1.7	2.0
Wind power /renewables	24	17	1.7	2.0
Scotland /Wales	16	18	1.1	1.3
Planning efficiency	16	18	1.1	1.3
TPOs	15	20	1.0	1.2
Participation	13	21	0.9	1.1
Permitted development	8	22	0.6	0.7
Airports	8	22	0.6	0.7
Conservation	6	24	0.4	0.5
Criminal law	6	24	0.4	0.5
Centralisation	6	24	0.4	0.5
Landscapes	4	27	0.3	0.3
Nuclear	3	28	0.2	0.2
Transmission lines	3	28	0.2	0.2
Motorways	2	30	0.1	0.2
Funding for participants	2	30	0.1	0.2
Parliamentary process	2	30	0.1	0.2
Green belt	1	33	0.1	0.1
Property rights	0	34	0	0
Private / hybrid Bills	0	34	0	0
Private property	0	34	0	0
Business Empathy and orientation	0	34	0	0

**Table 6.6 House of Commons
Report Stage
Ranking of Themes**

Theme	References	Ranking	% of Total	% without CIL
IPC	196	1	15.3	15.6
Scotland /Wales	154	2	12.0	12.2
NPS	143	3	11.2	11.3
Consultation	125	4	9.8	9.9
Democratic accountability	97	5	7.6	7.7
Climate change, low carbon	74	6	5.8	5.9
Airports	67	7	5.2	5.3
Permitted development	43	8	3.4	3.4
Sustainability	41	9	3.2	3.3
Wind power /renewables	36	10	2.8	2.9
Parliamentary process	31	11	2.4	2.5
TPOs	29	12	2.3	2.3
Housing	26	13	2.0	2.1
NSIPs	25	14	2.0	2.0
Environment	24	15	1.9	1.9
Regional planning	22	16	1.7	1.7
CIL	21	17	1.6	
Nuclear	21	17	1.6	1.7
Need for reform	15	19	1.2	1.2
Single consent	15	19	1.2	1.2
Property rights	13	21	1.0	1.0
Criminal law	11	22	0.9	0.9
Motorways	11	22	0.9	0.9
Planning inspectorate	9	24	0.7	0.7
Centralisation	6	25	0.5	0.5
Planning efficiency	6	25	0.5	0.5
Ports	4	27	0.3	0.3
Participation	4	27	0.3	0.3
Private / hybrid Bills	4	27	0.3	0.3
Transmission lines	3	30	0.2	0.2
Conservation	2	31	0.2	0.2
Green belt	2	31	0.2	0.2
Section 106 agreements	0	33	0	0
Landscapes	0	33	0	0
Funding for participants	0	33	0	0
Private property	0	33	0	0
Business Empathy and orientation	0	33	0	0

**Table 6.7 House of Commons
Third Reading Debate
Ranking of Themes**

Theme	References	Ranking	% of Total	% without CIL
IPC	198	1	17.5	17.7
NPS	192	2	16.9	17.1
Democratic accountability	110	3	9.7	9.8
Consultation	102	4	9.0	9.1
NSIPs	74	5	6.5	6.6
Climate change, low carbon	61	6	5.4	5.4
Airports	50	7	4.4	4.5
Scotland /Wales	47	8	4.1	4.2
Sustainability	39	9	3.4	3.5
Wind power /renewables	34	10	3.0	3.0
Permitted development	31	11	2.7	2.8
Environment	27	12	2.4	2.4
Nuclear	21	13	1.9	1.9
Housing	20	14	1.8	1.8
Motorways	17	15	1.5	1.5
Single consent	15	16	1.3	1.3
CIL	13	17	1.1	
Need for reform	13	17	1.1	1.2
Parliamentary process	10	19	0.9	0.9
Planning inspectorate	10	19	0.9	0.9
Property rights	7	21	0.6	0.6
Business Empathy and orientation	6	22	0.5	0.5
Planning efficiency	6	22	0.5	0.5
Criminal law	6	22	0.5	0.5
Ports	5	25	0.4	0.4
Private / hybrid Bills	5	25	0.4	0.4
Centralisation	4	27	0.4	0.4
Regional planning	4	27	0.4	0.4
Private property	2	29	0.2	0.2
Transmission lines	1	30	0.1	0.1
TPOs	1	30	0.1	0.1
Conservation	1	30	0.1	0.1
Participation	1	33	0.1	0.1
Section 106 agreements	0	34	0	0
Green belt	0	34	0	0
Funding for participants	0	34	0	0
Landscapes	0	34	0	0

**Table 6.8 House of Lords
Second Reading Debate
Ranking of Themes**

Theme	References	Ranking	% of Total
IPC	133	1	15.5
CIL	80	2	9.3
Democratic accountability	76	3	8.9
Climate change / low carbon	74	4	8.6
Sustainability	51	5	6.0
Wind power /renewables	49	6	5.7
Environment	44	7	5.1
NSIPs	43	8	5.0
Scotland and Wales	40	9	4.7
Parliamentary process	36	10	4.2
NPS	36	10	4.2
Housing	32	12	3.7
Section 106 agreements	27	13	3.2
Nuclear	26	14	3.0
Need for reform	21	15	2.5
Single Consent	17	16	2.0
Regional planning	13	17	1.5
Participation	11	18	1.3
PINS	8	19	0.9
Airports and airports NPS	7	20	0.8
Landscape	6	21	0.7
Permitted development	5	22	0.6
Overhead lines	4	23	0.5
Criminal law	4	23	0.5
Green Belt	3	25	0.4
Consultation	2	26	0.2
Property rights	2	26	0.2
Conservation	2	26	0.2
Private and Hybrid Bills	1	29	0.1
Motorways	1	29	0.1
Centralisation	1	29	0.1
Ports	1	29	0.1
Efficiency	0	33	0
Private property	0	33	0
Funding for participants	0	33	0
TPOs	0	33	0
Business Empathy and orientation	0	33	0

**Table 6.9 House of Lords
Committee Stage
Ranking of Themes**

Theme	References	Ranking	% of Total
NPS	317	1	22.2
Consultation	210	2	14.7
CIL	158	3	11.1
Sustainability	108	4	7.6
IPC	106	5	7.4
Environment	81	6	5.7
Wind power, renewables	59	7	4.1
Landscape	58	8	4.1
Parliamentary process	53	9	3.7
Airports	35	10	2.5
Democratic accountability	33	11	2.3
Scotland, Wales	31	12	2.2
NSIPs	22	13	1.5
Nuclear	21	14	1.5
Regional planning	19	15	1.3
Housing	18	16	1.3
Participation	15	17	1.1
Climate change, low carbon	13	18	0.9
Section 106	13	18	0.9
Motorways	9	20	0.6
Need for reform	5	21	0.4
Permitted development	5	21	0.4
PINS	5	21	0.4
Ports	5	21	0.4
Single consents	5	21	0.4
Property rights	3	26	0.2
Transmission lines	3	26	0.2
Criminal law	1	28	0.1
Private / hybrid Bills	1	28	0.1
Centralisation	1	28	0.1
Planning efficiency	0	31	0
Funding for Participants	0	31	0
Green Belt	0	31	0
TPOs	0	31	0
Conservation	0	31	0
Private property	0	31	0
Business Empathy and orientation	0	31	0

**Table 6.10 House of Lords
Report Stage
Ranking of Themes**

Theme	References	Ranking	% of Total
CIL	376	1	24.2
IPC	179	2	11.5
NPS	159	3	10.2
Housing	147	4	9.5
Consultation	136	5	8.7
Wind power, renewables	75	6	4.8
Scotland, Wales	64	7	4.1
Environment	50	8	3.2
NSIPs	44	9	2.8
Sustainability	39	10	2.5
Democratic accountability	37	11	2.4
Airports	32	12	2.1
Climate change, low carbon	31	13	2.0
Parliamentary process	30	14	1.9
Section 106	30	14	1.9
Regional planning	25	16	1.6
Motorways	22	17	1.4
Permitted development	11	18	0.7
PINS	11	18	0.7
Transmission lines	11	18	0.7
Ports	7	21	0.5
Nuclear	7	21	0.5
Centralisation	7	21	0.5
Single consents	7	21	0.5
Need for reform	6	25	0.4
Participation	4	26	0.3
Landscape	3	27	0.2
Planning efficiency	3	27	0.2
Criminal law	1	29	0.1
Private / hybrid Bills	1	29	0.1
Property rights	0	31	0
Funding for Participants	0	31	0
Green Belt	0	31	0
TPOs	0	31	0
Conservation	0	31	0
Private property	0	31	0
Business Empathy and orientation	0	31	0

**Table 6.11 House of Lords
Third Reading
Ranking of Themes**

Theme	References	Ranking	% of Total
CIL	104	1	29.7
NPS	41	2	11.7
Housing	34	3	9.7
IPC	27	4	7.7
Scotland, Wales	23	5	6.6
Landscape	22	6	6.3
Consultation	21	7	6.0
Sustainability	19	8	5.4
Section 106	13	9	3.7
Wind power, renewables	9	10	2.6
Environment	8	11	2.3
Private / hybrid Bills	6	12	1.7
NSIPs	4	13	1.1
Democratic accountability	3	14	0.9
Conservation	3	14	0.9
Airports	2	16	0.6
Climate change, low carbon	2	16	0.6
Parliamentary process	2	16	0.6
Regional planning	2	16	0.6
Nuclear	2	16	0.6
Ports	1	21	0.3
Permitted development	1	21	0.3
Planning efficiency	1	21	0.3
PINS	0	24	0
Transmission lines	0	24	0
Motorways	0	24	0
Centralisation	0	24	0
Single consents	0	24	0
Need for reform	0	24	0
Participation	0	24	0
Criminal law	0	24	0
Property rights	0	24	0
Funding for Participants	0	24	0
Green Belt	0	24	0
TPOs	0	24	0
Private property	0	24	0
Business Empathy and orientation	0	24	0

**Table 6.12 House of Commons / House of Lords
'Ping-Pong'
Ranking of Themes**

Theme	References	Ranking	% of Total
Housing	51	1	18.0
CIL	38	2	13.4
Climate change, low carbon	37	3	13.1
IPC	20	4	7.1
Democratic accountability	18	5	6.4
Sustainability	17	6	6.0
Environment	17	6	6.0
Consultation	12	8	4.2
PINS	12	8	4.2
Parliamentary process	11	10	3.9
Regional planning	8	11	2.8
Scotland, Wales	7	12	2.5
NPS	6	13	2.1
Conservation	5	14	1.8
Private / hybrid Bills	5	14	1.8
Need for reform	5	14	1.8
NSIPs	3	17	1.1
Centralisation	3	17	1.1
Wind power, renewables	2	19	0.7
Participation	2	19	0.7
Landscape	1	21	0.4
Permitted development	1	21	0.4
Transmission lines	1	21	0.4
Single consents	1	21	0.4
Green Belt	1	21	0.4
Airports	0	26	0
Section 106	0	26	0
Nuclear	0	26	0
Ports	0	26	0
Motorways	0	26	0
Planning efficiency	0	26	0
Criminal law	0	26	0
Property rights	0	26	0
Funding for Participants	0	26	0
TPOs	0	26	0
Private property	0	26	0
Business Empathy and orientation	0	26	0

Table 6.13 The Occurrence by Stage of Neoliberal Indicators and Other Themes in the Parliamentary Passage of the Planning Act 2008

given as a percentage of all theme occurrences identified in that Stage.

Theme →						
Bill Stage ↓	IPC	NSIP	NPS	Democratic Accountabilit	Centralisation	Business empathy and orientation
House of Commons						
Second Reading	12.8	1.5	11.0	13.6	0.4	0.4
Committee Hearings	13.3	5.2	12.0	2.2	0.1	0
Committee	14.4	4.1	15.1	3.6	0.1	0
Committee Written Submissions	9.3	6.7	10.4	3.3	0.4	0
Report	11.2	2.0	15.3	7.6	0.5	0.5
Third Reading	17.5	6.5	16.9	9.7	0.5	0.5
House of Lords						
Second Reading	15.5	5.0	4.2	8.9	0.1	0
Committee	7.4	1.5	22.2	2.3	0.1	0
Report	11.5	2.8	10.2	2.4	0.5	0
Third Reading	7.7	1.1	11.7	0.9	0	0
Ping-pong						
	7.1	1.1	2.1	6.4	1.1	0

**Table 6.14 House of Commons and House of Lords
Localism Bill
Ranking of Themes**

Theme →						
Bill Stage ↓	IPC	NSIP	NPS	Democratic Accountability	Centralisation	Business empathy and orientation
House of Commons						
Second Reading	1	2	1	0	9	0
Committee Hearings	9	10	2	1	0	3
Committee	19	2	4	10	0	1
Report	2	0	0	0	0	0
Third Reading	0	1	0	0	1	0
House of Lords						
Second Reading	6	3	6	1	0	1
Committee	16	13	55	5	8	0
Report	29	12	11	1	0	0
Third Reading	6	1	0	0	0	0
Ping-pong						
	0	0	0	0	0	0

Table 6.15 Chapter Headings of National Policy Statements

National Policy Statement	Designation Date	Chapter 1	Chapter 2	Chapter 3	Chapter 4	Chapter 5	Chapter 6	Chapter 7
Overarching Energy EN-1	19.07.2011	Introduction	Government policy on energy and energy infrastructure development	The need for new nationally significant energy infrastructure projects	Assessment principles	Generic impacts		
Fossil Fuels EN-2	19.07.2011	Introduction	Assessment and technology-specific information					
Renewable Energy EN-3	19.07.2011	Introduction	Assessment and technology-specific information					
Oil and Gas Supply and Storage EN-4	19.07.2011	Introduction	Assessment and technology-specific information					
Electricity Networks EN-5	19.07.2011	Introduction	Assessment and technology-specific information					
Nuclear Power EN-6	19.07.2011	Introduction	Assessment principles	Impacts and general siting considerations	Potentially suitable sites for the deployment of new nuclear 33 power stations in England and Wales before the end of 2025	Imperative Reasons of Overriding Public Interest (IROPI)	Radioactive Waste Management	Site Assessments
Ports	26.01.2012	Introduction	Government policy and the need for new infrastructure	Assessment principles	Generic Impacts			
Waste Water	09.02.2012	Introduction	Government policy on need for waste water infrastructure	Factors for examination and determination of applications	Generic Impacts			
Hazardous Waste	06.06.2013	Introduction	Government Policy on Hazardous Waste	Need for Large Scale Hazardous Waste Infrastructure	Assessment Principles	Generic Impacts		
National Networks	14.01.2015	Introduction	The need for development of the national networks	Wider government policy on the national networks	Assessment Principles	Generic Impacts		

			and government's policy					
Airports	26.06.2018	Introduction	The need for additional airport capacity	The government's preferred scheme: Heathrow Northwest Runway	Assessment Principles	Assessment of impacts		
Geological Disposal	17.10.2019	Introduction	Government Policy on Management of Higher Activity Radioactive Waste	The need for geological disposal infrastructure	Assessment Principles	Impacts		
Water Resources Infrastructure (Draft)	Draft	Introduction	Government policy and the need for water resources infrastructure	Assessment principles	Generic Impacts			

Table 6.16 Sub-headings of NPS Assessment Principles and Generic Impacts Chapters

	EN-1	EN-2	EN-3	EN-4	EN-5	EN-6	Ports	Waste Water	Hazardous Waste	National Networks	Airports	Geological Disposal	Water Resources Infrastructure (Draft)
Assessment Principles													
General principles	√						√	√	√	√	√	√	√
Environmental Impact Assessment	√						√	√	√	√	√	√	√
Habitats and Species Regulations	√						√	√	√	√	√	√	√
Alternatives	√						√	√	√	√	√	√	√
Criteria for “good design”	√						√	√	√	√	√	√	√
Safety								√		√		√	√
Climate change mitigation and adaptation	√						√	√	√	√	√	√	√
NPS specific													
Carbon Capture and Storage (CCS) and Carbon Capture Readiness (CCR)	√												
Consideration of Combined Heat and Power (CHP)	√												
Grid connection	√												
Pollution control and other environmental controls							√	√			√	√	√ *
Common law and statutory nuisance							√	√		√	√	√	√
Hazardous substances							√	√				√ *	
Health							√	√		√	√	√	√
Security considerations							√	√		√	√	√	√
Competition							√						

Tourism							√						
Consideration of specific types of hazardous waste									√				
Strategic rail freight interchanges									√				
Scheme variation													
Equalities											√		
Costs											√		
Accessibility											√		
Generic Impacts											√		
Introduction / overview	√						√	√	√	√	√	√	√
Air quality and emissions	√						√	√	√	√	√	√	√
Biodiversity and geological conservation	√						√	√	√	√	√	√	√ *
Civil and military aviation and defence interests	√						√		√	√			
Coastal change	√							√	√	√		√	√
Dust, odour, artificial light, smoke, steam and insect infestation	√						√	√	√	√	√		√
Flood risk	√						√	√	√	√	√		√
Historic environment	√						√	√	√	√	√	√	√
Landscape and visual	√						√	√	√	√	√	√	√
Land use including open space, green infrastructure and Green Belt	√						√	√	√	√	√	√	√
Noise and vibration	√						√	√	√	√	√	√	√
Socio-economic	√						√	√	√			√	√
Traffic and transport	√						√	√	√	√		√	√
Waste management	√						√	√	√	√	√	√	√
Water quality and resources	√						√	√	√	√	√	√	√

Land instability										√	√		
Surface access											√		
Carbon emissions											√		√
Home Office assets											√		
Community compensation											√		
Community engagement											√		
Skills											√		
Ruling out a fourth runway											√		

Appendix 8 Statutory Instruments Referenced in The Planning Act 2008 As Amended

The Planning Act 2008 (Commencement No. 1 and Savings) Order 2009	SI 2009/400
The Planning Act 2008 (Commencement No. 1) (England) Order 2009	SI 2009/1303
The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009	SI 2009/1307
The Planning Act 2008 (Commencement No. 2) Order 2009	SI 2009/2260
The Local Democracy, Economic Development and Construction Act 2009 (Commencement No. 2) Order 2009	SI 2009/3318
The Planning Act 2008 (Commencement No.4 and Saving) Order 2010	SI 2010/101
The Overhead Lines (Exempt Installations) Order 2010	SI 2010/277
The Marine and Coastal Access Act 2009 (Commencement No.2 and Transitional Provisions) Order 2010	SI 2010/298
The Planning Act 2008 (Commencement No. 5 and Saving) Order 2010	SI 2010/566
The Community Infrastructure Levy Regulations 2010	SI 2010/948
The Marine and Coastal Access Act 2009 (Commencement No.5, Consequential and Transitional Provisions) Order 2011	SI 2011/556
The Planning Act 2008 (Commencement No. 6) Order 2011	SI 2011/705
The Treaty of Lisbon (Changes in Terminology) Order 2011	SI 2011/1043
The Planning Act 2008 (Commencement No. 7) Order 2011	SI 2011/2054
The Localism Act 2011 (Commencement No. 2 and Transitional and Saving Provision) Order 2012	SI 2012/57
The Planning Act 2008 (Commencement No. 2) (England) Order 2012	SI 2012/601
The Localism Act 2011 (Commencement No. 4 and Transitional, Transitory and Saving Provisions) Order 2012	SI 2012/628
The Planning Act 2008 (Commencement No. 1) (Wales) Order 2012	SI 2012/802
The Infrastructure Planning (Waste Water Transfer and Storage) Order 2012	SI 2012/1645
The Network Rail (Ipswich Chord) Order 2012	SI 2012/2284
The Network Rail (North Doncaster Chord) Order 2012	SI 2012/2635
The Kentish Flats Extension Order 2013	SI 2013/343
The Rookery South (Resource Recovery Facility) Order 2011 2013	SI 2013/680
The Natural Resources Body for Wales (Functions) Order 2013	SI 2013/755
The Growth and Infrastructure Act 2013 (Commencement No. 1 and Transitional and Saving Provisions) Order 2013	SI 2013/1124
The A19 Trunk Road (Moor Farm Roundabout) (Temporary Restriction and Prohibition of Traffic) Order 2013	SI 2013/1183
The Planning Act 2008 (Nationally Significant Infrastructure Projects) (Electric Lines) Order 2013	SI 2013/1479

The Town and Country Planning (Section 62A Applications) (Written Representations and Miscellaneous Provisions) Regulations 2013	SI 2013/2042
The Community Infrastructure Levy (Amendment) Regulations 2014	SI 2014/385
The Planning Act 2008 (Commencement No. 3) (Wales) Order 2014	SI 2014/780
The Network Rail (Norton Bridge Area Improvements) Order 2014	SI 2014/909
The Crime and Courts Act 2013 (Commencement No. 10 and Transitional Provision) Order 2014	SI 2014/954
The Crime and Courts Act 2013 (Family Court: Transitional and Saving Provision) Order 2014	SI 2014/956
The Planning Act 2008 (Commencement No. 2) (Wales) Order 2014	SI 2014/1769
The Daventry International Rail Freight Interchange Alteration Order 2014	SI 2014/1796
The A556 (Knutsford to Bowdon Improvement) Development Consent Order 2014	SI 2014/2269
The Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014	SI 2014/2384
The Clocaenog Forest Wind Farm Order 2014	SI 2014/2441
The Willington C Gas Pipeline Order 2014	SI 2014/3328
The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015	SI 2015/664
The Infrastructure Act 2015 (Commencement No. 2 and Transitional Provisions) Regulations 2015	SI 2015/758
The Criminal Justice and Courts Act 2015 (Commencement No. 1, Saving and Transitional Provisions) Order 2015	SI 2015/778
The Infrastructure Planning (Radioactive Waste Geological Disposal Facilities) Order 2015	SI 2015/949
The Progress Power (Gas Fired Power Station) Order 2015	SI 2015/1570
The Norfolk County Council (Norwich Northern Distributor Road (A1067 to A47(T))) Order 2015	SI 2015/1347
The Swansea Bay Tidal Generating Station Order 2015	SI 2015/1386
The A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016	SI 2016/73
The Thorpe Marsh Gas Pipeline Order 2016	SI 2016/297
The Infrastructure Planning (Onshore Wind Generating Stations) Order 2016	SI 2016/306
The Housing and Planning Act 2016 (Commencement No.2, Transitional Provisions and Savings) Regulations 2016	SI 2016/733
The Hornsea Two Offshore Wind Farm Order 2016	SI 2016/844
The Environmental Permitting (England and Wales) Regulations 2016	SI 2016/1154
The Housing and Planning Act 2016 (Compulsory Purchase) (Corresponding Amendments) Regulations 2017	SI 2017/16
The Housing and Planning Act 2016 (Commencement No. 5, Transitional Provisions and Savings) Regulations 2017	SI 2017/281

The Infrastructure Act 2015 (Commencement No. 7) Regulations 2017	SI 2017/315
The Glyn Rhonwy Pumped Storage Generating Station Order 2017	SI 2017/330
The Crown Estate Transfer Scheme 2017	SI 2017/524
The East Anglia THREE Offshore Wind Farm Order 2017	SI 2017/826
The Planning Act 2008 (Commencement No. 3) (England) Order 2017	SI 2017/1078
The Wales Act 2017 (Commencement No. 4) Regulations 2017	SI 2017/1179
The M20 Junction 10a Development Consent Order 2017	SI 2017/1202
The Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Primary Legislation) Regulations 2017	SI 2017/1285
The Silvertown Tunnel Order 2018	SI 2018/574
The Welsh Ministers (Transfer of Functions) Order 2018	SI 2018/644
The A19/A184 Testo's Junction Alteration Development Consent Order 2018	SI 2018/994
The Infrastructure Planning (Water Resources) (England) Order 2019	SI 2019/12
The Port of Tilbury (Expansion) Order 2019	SI 2019/359
The Abergelli Power Gas Fired Generating Station Order 2019	SI 2019/1268
The A30 Chiverton to Carland Cross Development Consent Order 2020	SI 2020/121
The Reinforcement to the North Shropshire Electricity Distribution Network Order 2020	SI 2020/325
The West Midlands Rail Freight Interchange Order 2020	SI 2020/511
The A63 (Castle Street Improvement, Hull) Development Consent Order 2020	SI 2020/556
The Immingham Open Cycle Gas Turbine Order 2020	SI 2020/847
The Great Yarmouth Third River Crossing Development Consent Order 2020	SI 2020/1075
The Southampton to London Pipeline Development Consent Order 2020	SI 2020/1099
The Infrastructure Planning (Electricity Storage Facilities) Order 2020	SI 2020/1218

Appendix 9 Statutory Instruments relating to the operation of the Planning Act 2008 As Amended

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009	SI 2009/2264
The Planning Act 2008 (Commencement No. 3) Order 2009	SI 2009/2573
The Infrastructure Planning (Interested Parties) Regulations 2010	SI 2010/102
The Infrastructure Planning (Examination Procedure) Rules 2010	SI 2010/103
The Infrastructure Planning (Compulsory Acquisition) Regulations 2010	SI 2010/104
The Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010	SI 2010/105
The Infrastructure Planning (Fees) Regulations 2010	SI 2010/106
The Planning Act 2008 (Railways Designation) Order 2010	SI 2010/124
The Infrastructure Planning (Decisions) Regulations 2010	SI 2010/305
The Community Infrastructure Levy (Amendment) Regulations 2011	SI 2011/987
The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011	SI 2011/2055
The Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2011 (revoked)	SI 2011/2741
The Local Authorities (Contracting Out of Community Infrastructure Levy Functions) Order 2011	SI 2011/2918
The Localism Act 2011 (Infrastructure Planning) (Consequential Amendments) Regulations 2012	SI 2012/635
The Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2012 (revoked)	SI 2012/787
The Community Infrastructure Levy (Amendment) Regulations 2012	SI 2012/2975
The Infrastructure Planning (Fees) (Amendment) Regulations 2013	SI 2013/498
The Infrastructure Planning (Miscellaneous Prescribed Provisions) (Amendment) Regulations 2013	SI 2013/520
The Infrastructure Planning (Prescribed Consultees and Interested Parties etc.) (Amendment) Regulations 2013	SI 2013/522
The Community Infrastructure Levy (Amendment) Regulations 2013	SI 2013/982
The Highway and Railway (Nationally Significant Infrastructure Project) Order 2013	SI 2013/1883
The Infrastructure Planning (Business or Commercial Projects) Regulations 2013	SI 2013/3221
The Infrastructure Planning (Applications: Prescribed Forms and Procedure) (Amendment) Regulations 2014	SI 2014/2381
The Planning Act 2008 (Commencement No. 3) (Wales) Order 2014	SI 2014/2780
The Water Industry (Specified Infrastructure Projects) (English Undertakers) (Amendment) Regulations 2015	SI 2015/22

The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015	SI 2015/462
The Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) (Amendment) Regulations 2015	SI 2015/760
The Community Infrastructure Levy (Amendment) Regulations 2015	SI 2015/836
The A19/A1058 Coast Road (Junction Improvement) Development Consent Order 2016	SI 2016/73
The Thorpe Marsh Gas Pipeline Order 2016	SI 2016/297
The Infrastructure Planning (Onshore Wind Generating Stations) Order 2016	SI 2016/306
The Housing and Planning Act 2016 (Commencement No.2, Transitional Provisions and Savings) Regulations 2016	SI 2016/733
The Hornsea Two Offshore Wind Farm Order 2016	SI 2016/844
The Environmental Permitting (England and Wales) Regulations 2016	SI 2016/1154
The Infrastructure Planning (Compulsory Acquisition) (Amendment) Regulations 2017	SI 2017/105
The Infrastructure Act 2015 (Commencement No. 6 and Savings) Regulations 2017	SI 2017/108
The Infrastructure Planning Fees (Amendment) Regulations 2017	SI 2017/304
The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017	SI 2017/572
The Infrastructure Planning (Compulsory Acquisition) (Amendment) (No. 2) Regulations 2017	SI 2017/1073
The Community Infrastructure Levy (Amendment) Regulations 2018	SI 2018/172
The Town and Country Planning and Infrastructure Planning (Environmental Impact Assessment) (Amendment) Regulations 2018	SI 2018/695
The Community Infrastructure Levy (Amendment) (England) Regulations 2019	SI 2019/966
The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2019	SI 2019/1103
The Infrastructure Planning (Publication and Notification of Applications etc.) (Coronavirus) (Amendment) Regulations 2020	SI 2020/764
The Community Infrastructure Levy (Coronavirus) (Amendment) (England) Regulations 2020	SI 2020/781
The Town and Country Planning (Border Facilities and Infrastructure) (EU Exit) (England) Special Development Order 2020	SI 2020/928
The Community Infrastructure Levy (Amendment) (England) (No. 2) Regulations 2020	SI 2020/1226
The Infrastructure Planning (Publication and Notification of Applications etc.) (Amendment) Regulations 2020	SI 2020/1534

Appendix 10 Private Correspondence

10.1 Home Builders Federation 17.3.21

Andrew Whitaker <andrew.whitaker@hbf.co.uk>

To:

• Richard Rees
Wed 17/03/2021 11:51

Dear Richard

I refer to your email below which has been passed to me for response.

While the HBF does lobby and comment extensively on planning issues we were not particularly prominent in the debate regarding NSIP. Very early on in the debate it was made clear that the government didn't favour major residential development in itself as appropriate under NSIP and we accepted that as a position. It was difficult for us to argue that such development was "in the national interest" as we recognised that it was a local decision as to whether to provide for housing in a single, large development (which would use NSIP) or to propose multiple sites around an authority area. As an aside, we were supportive of allowing some residential development alongside NSIP but this was always going to be an ancillary use or "need".

On a more general note, we were one of the few organisations who lobbied hard to retain regional spatial strategies as we felt it was only at this level that decisions regarding the delivery of new settlements could be handled sensibly; in a wider context than at an individual local authority level. Similarly, we continue to promote the idea that major residential developments need to be planned for on a longer timescale than the development plan system allows. Indeed, this has been reflected in the current consultation on proposed changes to the NPPF which suggest that new settlements should be planned on a 30 year time horizon rather than the 15 years of a local plan. We have also been supportive of the latest announcement regarding the formation of a new strategic body to deliver a spatial strategy for the Oxford Cambridge Arc. However, none of this lobbying is specifically for the greater use of NSIP for housing developments per se.

I am sorry not to be of greater assistance but wish you every success with your PhD.

Kind regards

Andrew Whitaker

Andrew Whitaker MA MRTPI
Planning Director

HOME BUILDERS FEDERATION

10.2 CPRE 31.3.21

CPRE Campaigns Campaigns@cpre.org.uk

To:

• Richard Rees
Wed 31/03/2021 12:53

Hi there Richard,

Thanks for getting in touch and sorry for the delay in getting back to you, it's taken a little time to find the document you were asking for.

I hope the attached document is the one you were hoping for, and that this sheds some light on the topic!

Please do get back in touch if we can be of any more help.

Best wishes,

Patrick

PGP-MIPs jnt.doc See below
277 KB


Major Infrastructure Projects: delivering a fundamental change -
New Parliamentary Procedures for Processing Major Infrastructure
Projects

A joint response by the

Council for British Archaeology, Council for National Parks, Council for the Protection of Rural England, Friends of the Earth, Marine Conservation Society, National Trust, Open Spaces Society, Ramblers' Association, ROOM, Royal Society of the Protection of Birds, Town and Country Planning Association, Woodland Trust and World Wide Fund for Nature

March 2002

Introduction

We welcome the opportunity to comment on the Government's proposals for determining Major Infrastructure Projects (MIPs). We share the Government's objectives to reduce unnecessary time taken in inquiries and to safeguard public consultation and involvement. We welcome the proposed National Policy Statements (NPSs) and the proposals for improving public inquiries. However, we believe the proposed Parliamentary process is problematic because of its effect on public participation and the ability for Parliament to consider projects in sufficient detail. We are not convinced that the combination of major infrastructure proposals will meet either of the Government's objectives of reducing delays and safeguarding public consultation and involvement (para 5).

Summary of views

Coherent national framework for decisions on MIPs, for instance a framework for, or statement of, national spatial policy – we need a coherent national framework to provide the strategic context for integrated decisions about major infrastructure projects (for example consideration of impacts on a regional road network resulting from port proposals) and to help foster more even development across regions

National Policy Statements (NPSs) – we welcome the proposal to prepare National Policy Statements for issues such as ports and aviation. This is a positive development in the treatment of major infrastructure projects. These NPSs must be clear and unambiguous, and tackle important issues such as need, alternatives and broad location (for instance, broad regional location). They should cover issues of principle but not precise location, ie identify specific sites. They must be subject to rigorous, open scrutiny and

we believe this requires a form of examination open to all (akin to an improved, more accessible form of Public Examination of Regional Planning Guidance), rather than consultation modelled on Planning Policy Guidance where there is no opportunity to develop themes around a table and no opportunity to challenge others' assertions. We believe there is a case for an independent body with significant status to hear these representations, for example an independent policy commission.

Parliamentary process – we are not convinced by the Government's proposals for a Parliamentary process for decisions 'in principle' on 'the principle of, the need for and location of a project' (para 19) and we do not support them. The proposed process would require a step change in quality and resources if it were even to begin to address the key issues effectively. We believe the current proposals are unlikely to save significant time, and they will place substantial additional burdens on Parliament, and reduce effective public participation. We believe they would also reduce the quality and detail of consideration of proposals since vital information relating to specific sites could be unavailable. Moreover, we are not convinced that matters of principle and detail can be easily differentiated.

Detailed Public Inquiries – whatever the system for determining the principle of major projects, the local public inquiry will deal with detailed on site issues, including issues of environmental capacity. Any local inquiry Inspector must have the power to refer a major project back up the decision-making 'ladder', to Parliament and the Secretary of State, if the inquiry raises issues relating to the overall acceptability of the project.

Improving the current system – We welcome many of the proposals to improve public inquiry procedure. We believe inquiries should:-

- aim to secure high quality public participation in a less adversarial way;
- take an approach based on hearings and fact-finding discussion, with Inspectors taking a more inquisitorial role;
- make greater use of round-table discussions to help resolve issues;
- ensure full access to background information (e.g. research work) for all interested parties;
- set and enforce strict deadlines for submission of evidence and information;
- adhere to pre-arranged timetables, with penalties for abuse by participants;

- eliminate, as far as possible, time-wasting practices such as reading out proofs of evidence (written evidence should hold equal weight to oral);
- make greater use of pre-inquiry discussions – focus on the real ‘contested issues’;
- use planning advocacy services to their full potential to encourage, inform and co-ordinate input from the public;
- hold sessions at different times (including evenings and weekends) to increase access and openness; and
- consider funding NGOs and other public interest groups to enable them to participate on equal terms with other parties.

We believe that the most effective way of dealing with major projects could be by a combination of a framework for, or statement of, national spatial policy, the proposed National Policy Statements and improved practice and procedure in public inquiries.

Main comments

This response outlines our shared views and concerns about the Government’s proposals to introduce a new decision making mechanism for Major Infrastructure Projects. In summary they concern:

- **Public involvement:** the Parliamentary proposals will severely inhibit the public from participating in the debate about the principle of and need for a development deemed by Government to be of ‘national significance’. This risks further eroding public confidence in the planning process. In addition, the public do not get 42 days to comment on statements of economic and social benefits – and in any case we believe this would normally form part of the application and is unnecessary.
- **The capacity of Parliament:** we do not believe that Parliament has the time, the resources, the physical capacity, nor necessarily the technical expertise, to undertake the role proposed for it on major infrastructure projects. We are concerned that decision making could be political and whipped along party lines, although we note Lord Falconer’s recent indication to the contrary.
- **Strategic context, need, alternatives:** we do not believe the proposals provide a robust enough strategic context and we do not consider the Parliamentary process will allow sufficient debate of the required quality on the issue of need and, more pertinently, alternatives. We note that at

present many Environmental Statements produced for EIA do not provide adequate information or consideration of need and alternatives.

- Streamlining planning: we are not convinced the proposals will meet the Government's objectives as they will not necessarily result in time savings in the process of planning for major infrastructure projects, and we have doubts about how divisible matters of principle are from detail in reality.

Background

Inquiry delays and duration – Heathrow Terminal 5

The Government has been critical of the long time it can take to reach decisions on some major infrastructure projects. It draws on the experience of Heathrow Terminal 5, a public inquiry that lasted for 525 days over 3 years and 10 months, starting in May 1995 and ending in February 1999. There is a risk that a major policy change is being driven by this one example, however. It is important not to draw general conclusions from singular cases, and we note in particular the finding of the Royal Commission on Environmental Pollution that 'there have been less than a dozen national-scale projects since 1984 for which the public inquiry lasted more than three months'¹.

Much of the time spent on Terminal 5 was due to the lack of a clear national policy on airports - it was left to a local inquiry, with extensive voluntary participation, to debate important issues of national policy. Therefore, we welcome the recognition in the Planning Green Paper Planning: delivering a fundamental change, that 'there has been a failure historically to provide sufficient guidance on the Government's policies for delivering the country's major infrastructure needs' (para 4.58).

Recommendation: clearer guidance on national/major infrastructure together with improved public inquiry procedures are, we believe, the fundamental issues that need to be addressed in respect decisions on major infrastructure projects.

The Heathrow Terminal 5 inquiry illustrates the major reasons for genuine delays in planning procedures for major infrastructure projects. These are:

- a policy vacuum in which proposals are currently considered²;
- a failure of proponents and opponents to agree on data prior to an inquiry³; (although at the Dribden Terminal inquiry, data groups were set up prior to the opening of the inquiry itself in an attempt to address this issue);

- misuse and abuse of the inquiry timetable⁴; and
- submission of inadequate planning applications with insufficient detail (particularly EIAs)⁵.

We strongly believe that current delays in the system could be dealt with by a combination of:-

- a coherent national framework for decisions on MIPs, for instance a Planning framework for national spatial policy;
- the Government's welcome commitment to introduce National Policy Statements for major infrastructure;
- improving the role of Regional Planning Guidance; and
- improving existing public inquiry procedures.

Strategic context

A framework for, or statement of, national spatial policy

No single document contains the Government's overall planning or spatial strategy and, therefore, there is no strategic context for decisions on individual major infrastructure proposals. A strategy that meaningfully brings together the spatial dimension of national policy, various elements of the national Planning Policy Guidance series, and the proposed new National Policy Statements, is needed.

Recommendation: Regardless of whether a Parliamentary process is developed, a framework for, or statement of, national spatial policy is required to provide the strategic context for decisions about major infrastructure projects – it could also helpfully provide a context for the preparation of Regional Spatial Strategies.

National Policy Statements

In principle, we believe it is right to take national decisions at the national level, but we are not convinced that the current Major Infrastructure Projects package of proposals are the best solution.

Recommendation: We warmly welcome the proposal to produce National Policy Statements (NPSs), provided that these are clear and unambiguous, and that they tackle important issues such as need, alternatives (including

demand management) and, to a degree, location (for instance, broad regional location). They should focus on principles and criteria for development, but avoid precise locational guidance, ie identify specific sites.

Recommendation: NPSs must be subject to rigorous, open scrutiny and examination. We believe that some form of public examination or testing is essential, in a similar way to development plans or an improved, more accessible form of Public Examination of Regional Planning Guidance, for instance. As an initial stage, it should be subject to a three-month public consultation period as with other areas of Government policy. We believe there is a case for an independent body with significant status and wide expertise to hear these representations and report to Parliament. This might take the form, for example, of an independent policy commission, appointed by the Government following wide consultation, comprising both technical experts and individuals versed in sustainable development issues.

We note the recommendation of the Royal Commission on Environmental Pollution (RCEP) that ‘issues involved in framing a national policy underlying major infrastructure projects may better be handled by a body which combines inquisitorial and adversarial elements as a planning inquiry commission would⁶’.

Mere consultation on a draft Statement is not enough, especially as the paper implies that this might not always be the case - ‘there would normally be prior public consultation’ (para 7, emphasis added). We firmly believe that the approach above can help to produce better guidance and to increase ownership of it. Statements should be subject to Strategic Environmental Assessment or sustainability appraisal.

We believe that National Policy Statements could help to reduce significantly the time it takes to determine major infrastructure proposals. However, policy statements should not follow the precedent of the 1998 prisons policy circular⁷, as we consider this inadequate in terms of the consultation, justification, the consideration of alternatives and assessment of environmental implications and capacity.

In particular we note the Royal Commission on Environmental Pollution’s recommendations that ‘proposals for major infrastructure should always be put forward within the framework of considered national policies, which should always be adopted after wide public consultation, and take full account of environmental considerations’⁸.

Parliamentary process

Although the exact nature of the proposed Parliamentary procedure cannot be determined by the executive, we are concerned that whatever system is chosen, Parliament does not have the time, resources, capacity or detailed/technical expertise, to ensure that:

- there is full public scrutiny of the principle of development
- need and alternatives are fully considered
- all relevant information is considered in sufficient detail

Again we note the recommendation of the RCEP that ‘the national need for additional infrastructure should be probed in an open and participatory process, which where practicable should engage local communities which may be affected⁹’.

We are sceptical about the merits of the proposed Parliamentary process for dealing with decisions ‘in principle’, as:-

- the Secretary of State may have unfettered powers to decide what constitutes ‘nationally important’ (para. 11), without consultation (para. 18) and with no right of appeal.
- there will only be a right to object/make views known prior to Parliament considering proposals (para 7), and there is no right to be heard - a debate in Parliament is a debate in public, but it is not a public debate in the same way as currently provided by an inquiry
- it will be difficult for Parliament to consider these important issues in the detail that they warrant. For instance, does Parliament have the time and technical expertise to consider complex cases with large amounts of accompanying technical information, such as Environmental Statements? This raises the issue of whether the new procedure will be compliant with the EIA Directive.
- decisions may not be independent and impartial (as with the advice of an inquiry Inspector) as the Government has previously indicated that Parliament could be whipped along party lines. We do, however, note the very recent statement by Lord Falconer of Thoroton that ‘I would expect Parliament to demand a free vote and to make a decision based on the merits of the case’¹⁰.

We strongly urge the Government to seriously re-consider its proposals for Parliamentary approval of major infrastructure projects. Is Parliament the right place to scrutinise such proposals in detail? Will it have the resources

to do the job demanded of it? Will it be able to cross-examine witnesses on the principle of proposals? Can it substitute for this real ‘added value’ provided by the current inquiry system?

Parliament may have a role to play, but not as currently envisaged, and we do not believe it will ever be the whole solution. In particular, without a form of national spatial planning framework the overall strategic context within which Parliament considers individual proposals would be missing.

The proposals are likely to exert further pressures on already busy MPs and Peers. Parliamentary consideration would make such decisions more political and less impartial. Despite most, if not all, major infrastructure projects being called in by the Secretary of State they are, nevertheless, heard by an independent Inspector before a recommendation is made to the Secretary of State. A Parliamentary process will increase lobbying and risks turning such decisions into much more political ones, particularly if decisions are whipped along party lines (but see above). In addition, MPs could be placed in a difficult position where they have a constituency or financial interest in a proposal. Decisions on MIPs must be seen to be fair and transparent.

We note that the consultation paper proposes that ‘representations are sent to the Secretary of State... to ensure that the entire range of views is available to Parliament collectively rather than rely on individual lobbying of particular peers or MPs’ (para 28). However, the reality is that lobbying is likely to be significant under the new system.

The involvement of Parliament in planning for major infrastructure projects would also be subject to:

- Constraints on Parliamentary time - since Parliament is not continuously in session, major infrastructure proposals would need to be timetabled carefully to guarantee a free passage. Consideration of the proposal would not be free-standing as it currently is for public inquiries. The time available to undertake debates within each House could be limited and the timetable could produce its own delays (indeed the consultation paper recognises the need to ‘stop the clock whenever Parliament adjourned for a period of four days or more’ (para 29)). It therefore seems very doubtful whether the Parliamentary process will be any quicker.
- Lack of technical expertise – Parliament may not contain sufficient expert knowledge on the potential impacts of the array of major infrastructure projects that could be classified under these proposals. There are serious implications in terms of the level of expertise required for MPs and Peers meaningfully to debate complex issues within each House. There are

consequences in terms of costs and time of holding Select Committees to investigate proposals in more detail.

- Inadequate time and public legitimacy - MPs and Peers have many other Parliamentary duties to fulfil, and they may be unable to devote the required time to examine closely the matters under consideration. The opportunity for the public to make direct representations at a Public Inquiry cannot be adequately replaced by the opportunity to make representations to their MP prior to a debate. There is a significant risk of disaffection leading to direct action, with consequent costs and delays.

- Parliamentary resources - There are legitimate questions as to whether Parliament could physically accommodate the sorts of hearings that are

required, and whether it has the resources to support Select Committee hearings, or other methods, over what could be substantial periods of time.

Decisions ‘in principle’

Despite frequent reference in the paper, it is never clearly stated what approval ‘in principle’ is. What is the level of detail required to reach such a decision? Without such information, it is difficult to understand how the approval will fit with the statement of national policy, regional strategy and subsequent approval of project details, especially as it is not clear what level of specificity is intended for the National Policy Statements and Regional Spatial Strategies. (It is also unclear how the ‘improved regional framework’ (para 6) will work, for instance what level of detail will this have regarding major projects?).

We are not convinced that matters of principle and detail can be easily differentiated. Where decisions in principle are made this could create a momentum whereby it is very difficult to refer a case back following a subsequent detailed inquiry.

Likewise, what is the level of environmental information needed for ‘in principle’ decisions? The consultation paper suggests that a full EIA is needed for the Parliamentary debate, but how will MPs assess the adequacy of the EIA for the purposes of decision-making? If the Parliamentary process is followed, an EIA will need some form of independent review to assess its adequacy before it goes before Parliament. It would probably be more realistic to have an EIA looking at alternatives, need and broad location issues, to inform the Parliamentary debate but this raises issues of just how site specific ‘in principle’ is. Comparison of alternatives is particularly problematic because either there are no other proposals ‘on the table’ to compare with, or where other proposals are ‘on the table’, at

present there is no standard environmental baseline to enable comparison of EIAs. There are also difficulties in establishing common baselines for need, demand and capacity.

The Parliamentary Office of Science and Technology considers that ‘if the two Houses take on the role proposed by the DTLR, they would need to consider how they could assure themselves that they would receive timely, comprehensive and high quality information. Two options arise: to provide the resource internally, or to have sufficient internal capacity to commission, manage, interpret and communicate information from external experts’¹¹.

What is a major project?

In addition to our deep misgivings over these procedures, we are also very concerned by the extent of major infrastructure projects given in the consultation paper¹² (Appendix C12). They seem to be based on the criteria used to decide whether a project should be subject to an EIA, rather than ‘national significance’ per se. In particular, the paper states that ‘the proposals in this paper... cover a range of infrastructure types and although focussed on projects of national significance are not expressly confined to them’ (para 14). We do note, however, that Lord Falconer’s states ‘the Appendix to the consultation document has alarmed many people because it does, on the face of it, seem to put a wide range of projects within scope. I am open to views about whether that list should be more circumscribed and whether we can draw the criteria a bit tighter’¹³. We believe this list should be circumscribed considerably and we firmly believe that any new procedure should be exceptional and limited to no more than one or two projects per year.

Case study

Even the present system for determining whether a project should be considered under a major or minor inquiry is inconsistent and subject to the judgement of the Secretary of State. For instance, in July 2001, the Finningley hearing was classed as a minor public inquiry, even though the proposals are for what proponents call ‘an international airport’, with regional and national significance. By contrast a comparable development involving transport infrastructure, the Dibden Bay Container terminal near Southampton, was given major public inquiry status. The distinction is significant, as parties at the Dibden Bay major inquiry received 27 weeks in which to prepare their case (between the pre inquiry meeting and the start of the inquiry). For the ‘minor’ Finningley inquiry this timescale was reduced to 7

weeks. Similarly, at the Dibden inquiry parties were given 23 weeks in which to prepare proofs of evidence while at Finningley the time given was 3 weeks.

Notwithstanding the above, if the Secretary of State is to be given discretionary power to decide when to apply the new procedures (para. 10), then there should at least be statutory guidance produced that defines the scope of the Secretary of State's discretion. In this context, we welcome the suggestion that Crown development projects might be designated, thus bringing them within statutory procedures (para. 12).

We note that the paper tends to adopt an unquestioning attitude to major infrastructure projects. For example, it states that major infrastructure projects 'are essential to our economic future and bring benefits through better services' (para 4). The paper should address the benefits arising from major infrastructure projects in parallel with the other strands of sustainable development in A Better Quality of Life and in light of the statement in the Green Paper that the planning system has a 'critical role in achieving Government's commitment to sustainable development' (para 1.4). Not all major infrastructure project proposals will necessarily be beneficial in this context.

Improved public inquiries

Recommendation: We support the Government's intention to improve inquiry procedure. There is considerable scope to make inquiries more effective and efficient, fairer and quicker.

Inquiries can be improved, for example, through better resources – including public funding for NGO and other public interest groups - and preparation, including much greater emphasis on pre-inquiry discussion; the holding of round table meetings; greater emphasis on the inquisitorial role of inspectors; getting rid of redundant and unhelpful practices, such as the verbatim recital of statements; and introducing and enforcing stricter timetables, and possibly applying penalties for non-compliance. Together with National Policy Statements, such improvements could go a long way towards addressing the concerns about the time it takes to determine major projects without having an adverse impact on people's ability to contribute positively to the inquiry and to have a legitimate and fair say in the process.

Detailed Public Inquiries

Whatever system is created for major projects, the subsequent detailed inquiry must be able to recommend that a major project not go ahead in the

light of local information, capacity or evidence, as well as refer issues back when new evidence arises that affects the ‘in principle’ decision. This should not only apply to ‘exceptional circumstances’, as is suggested in the consultation paper (para 22). We are pleased that the RCEP echoes this view:

‘if under the government’s proposals for major projects the inspector conducting the local inquiry concludes that the local impacts of a proposed project would be unacceptable, he should be permitted to recommend that the approval in principle should be reconsidered’¹⁴

It is also essential to recognise that in some cases, the principle of a development may be acceptable but the detail of the proposal may not.

Public involvement

Of common concern is the reduction of public involvement in planning for major infrastructure projects that the proposed Parliamentary procedure will produce. We believe that the Government’s proposed approach is inconsistent with current wider reform of the planning system, in particular its commitment in *Planning: Delivering a Fundamental Change* (December 2001) to ‘a planning system that fully engages people in shaping the future of their communities and local economies’. We do not believe the proposals deliver on the Government’s promise that they ‘will not reduce people’s involvement in the process’ (para 7).

It is likely that major infrastructure projects determined under the proposed procedures will be among the most controversial planning decisions of the future. The proposed new Parliamentary procedure would require the separate consideration of local and national issues of a scheme, resulting in insufficient public scrutiny of the need for development at a specific location or the alternatives. We believe that this would seriously damage the quality of decision-making, fuel public disaffection with the planning system and risks increasing the likelihood of direct action in the future with the consequent effects of delay, frustration and cost in project delivery.

We firmly believe that the ‘problem’ identified, ie the length of inquiries, is largely the result of a lack of national policy and inadequate procedure, practice and management, and that it is not due to public participation. Participation does take some time, but it is necessary in order to deliver proper scrutiny and to reach legitimate decisions. It is particularly notable that in 1990 the Government noted ‘for the larger and most controversial schemes...decisions are likely to take a long time under any procedure, unless public examination of the proposals were radically curtailed – a course which would not be acceptable to the Government or to the

public.’¹⁵ We do not believe anything has fundamentally changed in the intervening 12 years to alter this conclusion.

Any new procedure for determining major infrastructure projects should not ‘balance’ public involvement with faster decision-making, as the consultation paper suggests (paragraph 27). It should not be necessary to ‘trade off’ public rights to examine the principle of development in order to secure modern infrastructure for the UK. Instead, the Government should seek ways in which the need for and location of major infrastructure can be debated and agreed, eg through improved methods of mediation and conflict resolution. However, where conflict does arise we believe effort should be focused on establishing more efficient methods of hearing evidence at the public inquiry, not on curtailing debate in the interest of speed.

The proposed procedure for major infrastructure projects risks introducing a two tier planning system in which the most controversial and potentially damaging development do not receive the same level of scrutiny by the public as developments of less importance. Such an outcome would be perverse.

Minimum requirements for public participation

The consultation paper fails to consider the implications of a Parliamentary procedure on the principles of natural justice, human rights under the Human Rights Act 1998 and requirements for public involvement under the Aarhus Convention on Public Participation¹⁶ (1998) (to be transposed into UK law).

These require that those affected by major infrastructure projects receive a fair hearing by an impartial and independent tribunal, and that for public participation ‘reasonable timeframes’ are provided, ‘appropriate’ methods adopted and due account taken of such participation in decision making – ‘questions arise over how scrutiny of MIPs can... provide ‘reasonable timeframes’ for participation; adopt ‘appropriate’ methods of participation and take ‘due account’ of participation in decision making’¹⁷.

Specifically, the principles of natural justice which underlie the provision of the rules of the Public Inquiry (and their specific requirements) remain despite the passing of a Parliamentary ‘approval’ such that:

‘The duty of the Inspector to examine all relevant issues will remain, as will the Inspector’s discretion to permit any person to appear who has something relevant to say.’¹⁸

Should a new Parliamentary procedure seek to limit the scope of public debate it risks interfering with the rules of natural justice and bringing the planning system under judicial scrutiny. The paper is also quiet on the specific implications of the Habitats Directive and SEA Directive.

Streamlining planning?

We are far from convinced that the new procedure will ‘help speed up the decision-making process on major infrastructure projects by saving time later’ (paragraph 33). Indeed, there is a risk that the proposals may do no more than substitute the time taken to consider the principle of development at public inquiry with a similar period of time in Parliament.

Specific points

The list of legislation given in para 13 appears incomplete. For example, there is no mention of the Food & Environment Protection Act or the Coast Protection Act, both of which can consent major projects of one kind or another (eg disposal of material at sea, dredging, land claim).

Conclusion

We believe that public involvement in planning is not only essential to ensure a fair process of decision-making, but that it provides a source of information and perspective that technical analysts can sometimes overlook or misinterpret and that it adds value to the process and can help broaden consensus. In light of this, and the criticisms outlined above, we express considerable concern about the proposed new Parliamentary procedure for major infrastructure projects. To judge the national interest without offering the public a full opportunity to comment and contribute could undermine wider efforts to reform the planning system and breed public mistrust in the revised system.

Fundamentally, the proposed procedure risks undermining integrated strategic planning since it is essential that site-specific details such as the impact of development on the local economy, environment and community receive consideration in determining the principle of development.

The Government’s proposals fail to consider the implications on Parliamentary time and the potential delays incurred to schemes while other Parliamentary business is attended to.

Without prejudice to our comments above, if Parliament is to play a role in the procedure for planning major infrastructure projects, it must not be done without a strategic spatial and policy context, and full public debate

on issues of need and alternatives. We are not convinced that the costs/benefits of removing such considerations to Parliament have been calculated by Government, and doubt that:

- Parliament has either the capacity or capability to fulfil such a role; and
- such procedures would in reality lead to streamlining of the current system.

As such, we recommend that the Government pursue its objective of streamlining planning procedures for major infrastructure projects without the aid of the proposed Parliamentary procedure, but instead rely on a framework for, or statement of, national spatial policy, National Policy Statements and improvements to the conduct and procedure of planning inquiries. Provided it is properly agreed (unlike those hitherto, e.g. on prisons), a clear national policy context would remove the need for prolonged debate on such issues at public inquiry, e.g. on issues such as national aviation policy which led to much of the time taken and genuine delays experienced at the public inquiry into London Heathrow Terminal 5. Strengthening the role of regional planning and further improvements to the public inquiry system would also deliver a more streamlined, effective and efficient planning system for major infrastructure projects.

¹ Royal Commission on Environmental Pollution (2002) Environmental Planning, Twenty-third Report, The Stationery Office, London (para 8.43)

² At the inquiry no national air transport policy was available against which the inspector could assess the planning application. The Planning Inspector had to discuss and develop new national policy based on the evidence put before him.

³ The proponents and opponents were unable to agree the validity of even the most basic data. Hence, every topic for discussion was argued over in much greater detail than might otherwise have been the case

⁴ Last minute removal of evidence regarding proposals for a two-lane loop road from the M4 to the Terminal 5 site caused the inquiry to be adjourned resulting in a genuine 'delay' of a month while new evidence was submitted and absorbed.

⁵ The lack of detail concerning public transport proposals caused considerable inquiry time (10 months) to be taken up discussing traffic

modelling and congestion issues under the topic heading of 'surface access'.

⁶ RCEP (2002) para 8.56

⁷ DETR (1998) Circular 03/98: Planning for Future Prison Development, DETR, London

⁸ RCEP (2002) para 8.49

⁹ RCEP (2002) para 8.50

¹⁰ Speech by Lord Falconer of Thoroton to RSPB/Green Alliance debate on the Future of Planning, Commonwealth Club, London, 18 March 2002

¹¹ Parliamentary Office of Science and Technology (2002) Postnote 173, Appraising Major Infrastructure Projects, POST, London

¹² the Appendix C Definition of Major Infrastructure Projects is based on projects in Appendix 1 of the EIA Directive (projects requiring mandatory EIA) with some additions/deletions

¹³ Speech by Lord Falconer of Thoroton to RSPB/Green Alliance debate on the Future of Planning, Commonwealth Club, London, 18 March 2002

¹⁴ RCEP (2002) para 8.58

¹⁵ Following the report of the Joint Committee on Private Bill Procedure, 1990.

¹⁶ UNECE (1998) Convention on access to information, public participation in decision making and access to justice in environmental matters.

¹⁷ Parliamentary Office of Science and Technology (2002) Postnote 173, Appraising Major Infrastructure Projects, POST, London

¹⁸ Transport and Works Act 1992: A Guide to Procedures for obtaining orders relating to transport systems, inland waterways and works interfering with rights of navigation. Department of Transport, 1992 (London: HMSO) page 52.

Appendix 11 National Policy Statements Commentary on Designation Procedures

For the sake of clarity and completeness details of the designation procedures for all National Policy Statements are included here, although two have also been included in the main text as illustrations.

1 Energy NPSs

Following the royal assent to the Planning Act on 26th November 2008 the Energy and Climate Change Select Committee of the House of Commons considered the principle of NPSs at its meetings on 20th May 2009 and 16th June 2009 ahead of the publishing of the drafts of the suite of energy NPSs on 9th November 2009. These, together with the Ports NPS, were the first draft NPSs to be produced. All six of the energy NPSs were dealt with together during the designation process.

The Liaison Committee designated the Energy and Climate Change Committee to consider energy NPSs (House of Commons 2010) and this Committee received in all 105 memoranda from a wide variety of organisations and individuals concerning the draft NPSs. These included one from the Department of Energy and Climate Change that set out the programme of consultations that had been carried out across England and Wales to publicise the advent of the NPSs. The Committee held ten formal hearings of evidence from 57 witnesses and held a further three meetings to discuss their findings. These were presented in their report of 17th March 2010 that contained 30 recommendations for changes to the proposed Energy NPSs and including a recommendation for a debate on the floor of the House:

'Given the importance of the Statements in delivering our energy and climate change objectives, we recommend that they be subject to a

debate in the main Chamber on an amendable motion, offering the possibility of a vote.' (Parliamentary Record HC 648)

In the House of Lords six Grand Committee sessions were devoted to the energy NPSs culminating with full debates on the floor of the chamber on 29th March 2010 and again on 11th January 2011 when a revised overarching energy policy EN-1 was considered. As with many Lords debates the motions considered were not taken to a vote, with government ministers undertaking to consider further the issues raised. Given the timing of the debate there was ample opportunity for appropriate amendments to be made to the government's final proposals.

A House of Commons debate was held on 18th July 2011 following the publishing of further government proposals on 23rd June 2011 and the motion to note and approve the NPSs was unopposed in the cases of EN-1, -2, -3, -4 and -5 while the motion to approve EN-6, Nuclear Power generation, was approved by 267 votes to 14.

2 Ports

The draft Ports NPS was laid before parliament on 9th November 2009 and the conduct of its examination under Standing Order 152H was delegated by the Liaison Committee to the Transport Select Committee (House of Commons 2010). This committee held three hearings of evidence in January 2010 involving 26 witnesses in addition to receiving 59 written memoranda from interested parties: it held five meetings at which the Ports NPS was discussed and published its report containing 22 recommendations on 17th March 2010. These included Recommendation 19, that sufficient time (at least six months) should be allowed for all the responses to the governments consultation process to be considered by the sub-committee, and Recommendation 21, that without major changes the draft NPS was not fit for purpose, particularly so because it could not be viewed in the context of the NPS for National Networks that was yet to be published or of consultations with the Marine Management Organisation. It also recommended that the government should provide parliamentary time for the proposal for a NPS for Ports to be debated on the floor of the House of

Commons within the relevant period. (Hansard 2010a). A short discussion on the Ports NPS was also held in the Grand Committee of the House of Lords on 4th March 2010 with the contents of the NPS being noted, although no formal debate was held.

A revised draft Ports NPS was laid before parliament on 24th October 2011. The document was introduced by the Parliamentary Under Secretary of State for Transport who noted that

'It has been agreed with the House that the same procedure as proposed in the Localism Bill will be followed for the NPS. The Secretary of State intends to designate the NPS after a period of 21 sitting days has elapsed, or following a debate in the House of Commons if the House wishes one, and approves the NPS, within that period.' (REF)

The revised NPS was the subject of a debate on the floor of the House on 29th November 2011 and 19th January 2012 where the motion to note and approve the NPS was passed without a division. The Parliamentary Under-Secretary of State for Transport formally designated the NPS by means of a Written Statement to the House of Commons on 26th January 2012.

3 Waste Water

The waste water NPS was project specific, being focussed almost entirely on the projected Thames Tideway Tunnel that was intended to alleviate pollution problems caused by lack of capacity in the London's sewage disposal system. This had been the cause of an increasing number of pollution incidents in the Thames breaching European directives on water purity with the possibility of financial sanctions on the government.

A draft waste water NPS was placed before parliament on 16th November 2010 and was scrutinised by the Environment, Food and Rural Affairs (EFRA) select committee. This held three meetings in January 2011 at which 11 witnesses were examined and received 12 items of written evidence from interested parties. It held two additional meetings to discuss the NPS and to produce its report which was published on 5th April 2011.

The report made 19 recommendations and was particularly critical of the consultation process carried out for the NPS, and the incompleteness of the document as laid before parliament. The two recommendations were:

‘....that any future consultation on a draft NPS is given a higher profile, particularly with the local authority and planning communities.’ (Hansard 2011a Para 70)

and

‘The draft NPS should not have been published for consultation and scrutiny until more complete. This NPS should not be designated until those deficiencies are corrected.’ (ibid para 72)

The report also recommended that, given the importance of the NPS in delivering waste water and water quality objectives, the draft NPS should be subject to a debate on the floor of the House of Commons on an amendable motion prior to designation.

The Grand Committee of House of Lords considered the NSP on 5th April 2011 and agreed without a division to report that it had done so.

A revised draft of the NPS was laid before parliament on 9th February 2012 and was debated in the House of Commons on 19th March 2012. While satisfaction was expressed that the government had accepted the recommendations of the EFRA select committee, there was continuing concern that there was no means of determining if an NSIP to be assessed against the NPS was the best available or even an acceptable scheme in terms of value for money: that would remain purely a decision for the scheme promoter. The process demonstrated democratic accountability in the former case but not in the latter. The motion to note and approve the NPS was passed without a division after a debate lasting a little over 90 minutes. It was designated by the Secretary of State for Environment, Food and Rural Affairs in a written ministerial statement on 26th March 2012.

4 Hazardous Waste

A draft hazardous waste NPS was laid before the House of Commons on 14th July 2011 and scrutinised by the Environment, Food and Rural Affairs (EFRA) select committee. This held three meetings in September and October 2011, at which 11 witnesses were examined, in addition to a formal meeting on 6th December 2011 at which its report was adopted. The Committee also received seven memoranda in written evidence.

The Committee's report, its eleventh of the 2010-12 session, was issued on 6th December 2011. It contained sixteen recommendations and included criticism of the consultation process undertaken in connection with the NPS:

'It is very disappointing that despite our criticisms of Defra's consultation on the draft Waste Water NPS, the consultation on the draft Hazardous Waste NPS has received even fewer responses. This underlines the need for the Department to do far more to engage with the public in this policy area.' (Hansard 2011b:21)

It noted that

'We expect Defra to amend the draft NPS in line with our recommendations before laying it before Parliament for approval.'
(Ibid:19)

and concluded that the NPS should be designated subject to amendment to take its recommendations into account. The report made no recommendation with regard to a debate on the floor of the House of Commons, unlike all previous NPS scrutiny reports.

The House of Lords Grand Committee considered the NPS on 12th October 2011 and agreed without a division to report that it had done so.

In this case there was no parliamentary debate on the NPS. The government's response to EFRA Committee report was made initially by letter to the Chairman and then issued at the same time as the final version of the NPS was laid before parliament on 6th June 2013. It was to be designated 'by default' after 21 days under S5(4)(a) - a new clause

introduced by the Localism Act. This was set out in the Ministerial Written Statement in the following terms:

'The proposed national policy statement for hazardous waste will be designated if a period of 21 sitting days elapses without the House of Commons resolving during that period that the statement should not be proceeded with, pursuant to section 5(4)(a) of the Planning Act 2008.'
(Parliamentary Record Vol.563, Col.119WS)

No such resolution was forthcoming, and the final draft became the NPS on 17th July 2013. It could be argued that the system of designating the NPS without positive action from the legislature is something of a diminution of parliamentary involvement, brought about by changes under Localism Act, but this would be to ignore the real involvement of MPs in examining the terms of the NPS in committee hearings and evidence sessions.

5 National Networks

A draft NPS for National Networks was laid before parliament on 4th December 2013. This dealt with the development of nationally significant infrastructure projects (NSIPs) on the national road and rail networks in England, these NSIPs having been defined by Sections 22 and 25 of the Act. The draft was introduced by a written statement to the House of Commons by the Parliamentary Under Secretary of State for Transport that also announced the start of the consultation process required under the Act and defined the relevant period in which, if either House or a Committee of either House made a resolution with regard to the proposal to designate an NPS, a statement will be laid in response. This was to start on that day and run for 24 weeks until 21st May 2014. The NPS was scrutinised by the Transport select committee, with one session held to receive oral evidence from ten witnesses and written memoranda from 41 sources. A further five meetings of the Committee were held, with a report (its sixteenth) issued on 17th May 2014. This made thirteen recommendations, the twelfth of which (*We look forward to seeing the NPS in final form later this year and debating its contents.*) foreshadowed a parliamentary debate on the final version of the NPS.

A debate was held in the House of Lords on 8th May 2014 on a motion that *'...this House considers that the Proposed National Policy Statement for National Networks is not fit for purpose...'*. As is often the case in House of Lords debates, the motion was withdrawn at the end of the debate without a division (Parliamentary Record Vol.753, Col.1674).

The government's response to the Select Committee's report was given in an undated Command Paper 8978 in December 2014 and the final version of the NPS was laid before parliament on 17th December 2014 by the Minister of State for Transport (HCWS 130) The process allows a period of 21 sitting days within which the NPS could be changed by a resolution of the House or a recommendation of a committee. A debate was held on 13th January 2015 on the motion *'That this House approves the National Policy Statement for National Networks, which was laid before this House on 17 December 2014.'* The motion was passed without division (Parliamentary Record Vol.590, Col.807) and the designation of the NPS was made the following day in a written statement from the Minister of State (Parliamentary Record Vol.590, Col.28WS).

6 Airports

The Airports NPS was one of the last NPSs to be produced but it had been foreshadowed by extensive concerns expressed during the debates on the contents of the Planning Bill in 2008. Concern had been expressed by MPs from all parties about the possibility of planning consent being granted for the construction of a third runway at London Heathrow Airport on the basis of previously published proposals and without a properly approved process being followed. There was an unwillingness on the part of MPs to allow the government to designate as national policy measures that had been incorporated in Green Papers or other consultative documents in previous years. Paul Truswell (Lab) said

'The Department for Transport has already indicated that the air transport White Paper will form the basis of an NPS on airport developments—something I do not feel I could possibly support.' (Hansard 2007: Col 66)

John McDonnell (Hayes and Harlington, Lab) concurred:

'Any attempt to incorporate the aviation White Paper into a policy statement would be an abuse of power because it has not gone through the exhaustive process of consultation, dialogue and discussion that any policy statement would be expected to undergo, especially in my community.' (Hansard 2007: Col 89)

These objections manifested themselves on the face of the Act in the requirements of Part 2 relating to NPSs. This was framed in such a way that an NPS could only be designated as such if it had been laid before parliament, had been the subject of defined publicity and consultation procedures, and parliament had been given the opportunity to investigate fully the effects of the NPS and make recommendations to which the government must respond. The draft NPS could be the subject of a debate on an amendable motion that the government must win before the NPS could be designated. The Airports NPS specifically referred to the development of a third runway at London Heathrow airport, a development that would have resulted in the demolition of many houses, schools and other public buildings. The sensitivities and uncertainties surrounding this development resulted in the Airports NPS being one of the last of the original list of NPSs included in the PA 2008 to be designated.

The initial draft NPS was laid before parliament on 2nd February 2017 and specifically referred to *'The specific requirements that the applicant for a new north-west runway at Heathrow Airport will need to meet to gain development consent.'* It was accompanied by a written Ministerial Statement from the Secretary of State for Transport giving details of the publicity and consultation arrangements required under the Act and also appointing a former Lord Justice of Appeal and Senior President of Tribunals to ensure that the consultation process was carried out correctly.

The Transport Select Committee resolved to inquire into the Airports NPS on 20th February 2017 but had only progressed to the receipt of written memoranda by the time a general election was called for 8th June 2017. The committee was reconstituted following the election and met first on 13th

September 2017¹⁰⁷. The original draft NPS was replaced with an updated version on 24th October 2017 and introduced in a ministerial written statement by the Secretary of State for Transport (Parliamentary Record Vol.630, Col.9WS). The Select Committee held meetings at which oral evidence was given by 31 witnesses and received memoranda from 88 interested individuals and organisations. It held a further four meetings to consider the issues and issued its report (its third of the parliamentary session) on 19th March 2018. On 15th March 2018 the House of Lords debated a motion that

'...this House approves the National Policy Statement on New runway capacity and infrastructure at airports in the South East of England.' The motion was agreed without a division. (Parliamentary Record Vol.789, Col.1791)

A second draft Airports NPS, with a scope much broadened from the first draft as demonstrated by its new title of *'Airports National Policy Statement: new runway capacity and infrastructure at airports in the south-east of England'*, was published on 5th June 2018 and introduced by a statement to the House of Commons by the Secretary of State for Transport (Parliamentary Record Vol. 642, Col.169). The statement was repeated in the House of Lords on the following day by Baroness Sugg who then answered a number of questions from members of that House although there was no formal debate (Parliamentary Record Vol.791, Col.1323). The NPS was the subject of a debate in the House of Commons on 25th June 2018 on a motion that *'... this House approves the National Policy Statement on New runway capacity and infrastructure at airports in the South East of England, which was laid before this House on 5 June 2018.'* This was carried by 415 votes to 119 and the NPS was designated by a written statement from the Secretary of State on the following day. (Parliamentary Record Vol.643, Col.25WS)

7 Water Resources Infrastructure (Draft)

The Planning Act 2008 was amended in 2012 by The Infrastructure Planning (Waste Water Transfer and Storage) Order 2012 (S.I. 2012/1645), and in

2019 by The Infrastructure Planning (Water Resources) (England) Order 2019 (S.I. 2019/12). The effect of these changes was to include infrastructure for the transfer or storage of waste water and the construction or alteration of a desalination plant in the list of projects to be subject to the consenting procedures established under the Act. The qualification size and capacity limits of the facilities to be so treated were re-defined in revised Sections 27 and 28 of the Act.

A draft NPS for Water Resources infrastructure was laid before parliament on 28th November 2018 and introduced by a written statement from the Parliamentary Under-Secretary of State for Environment, Food and Rural Affairs which also gave details of the publicity and consultation arrangements required under the PA 2008. Scrutiny of the draft NPS was carried out by the Environment, Food and Rural Affairs Select Committee, which launched its inquiry on 14th February 2019, with its report being formally adopted and published on 23rd April 2019. The committee took evidence from eight witnesses and received memoranda from 24 interested organisations or individuals, and its report noted 26 conclusions and recommendations.

The House of Lords on 11th April 2019 debated a motion that '*...this House takes note of the draft National Policy Statement for Water Resources Infrastructure 2018.*' (Parliamentary Record Vol.797, Col.546). The motion was agreed without a division.

In the case of all other NPSs the issue of the select committee report would be followed relatively quickly by the laying before parliament of a revised and final version of the NPS that would either be designated on the elapse of the defined period without a resolution of either House or the recommendation of a committee or following a debate on an amendable motion on the floor of the House of Commons. In the case of the water resources infrastructure NPS no revised draft NPS has been issued to date (September 2022) and the NPS remains undesignated.

8 Geological Disposal Infrastructure

Developments relating to a radioactive waste geological disposal facility were added to the Section 14 list of NSIPs to be consented under PA 2008 procedures by the Infrastructure Planning (Radioactive Waste Geological Disposal Facilities) Order 2015 (S.I. 2015/949), which also added full definitions of such facilities at Section 30A.

A draft NPS for geological disposal infrastructure was laid before parliament on 25th January 2018 and introduced a ministerial written statement by the Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Parliamentary Record Vol.635, Col.13WS). The draft NPS was scrutinised by the Business, Energy and Industrial Strategy Select Committee. This took oral evidence from nine witnesses, received 12 memoranda from interested bodies or individuals, but held no formally-minuted meetings to discuss the matter before resolving on 23rd July 2018 to issue its report. This contained ten conclusions and recommendations and noted that

'Provided that the Government takes into account our recommendations aimed at improving the engagement of and benefits to prospective host communities, we support the case for the final NPS to be brought before Parliament for approval.'

The Committee made no recommendation regarding a debate in the House of Commons (Hansard 2018).

The House of Lords sitting as the Grand Committee debated on 6th September 2018 a motion that

'...the Grand Committee takes note of the draft National Policy Statement for Geological Disposal Infrastructure: A framework document for planning decisions on nationally significant infrastructure.'(Parliamentary Record Vol.792, Col.163GC).

The motion was agreed without a division.

A revised draft NPS was laid before parliament on 4th July 2019 supported by a written statement from the Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Parliamentary Record Vol.662, Col.69WS). This noted that the recommendations of the select committee had been taken into account in the revision of the document, with the government's formal response to the select Committee's report being contained in an un-numbered command paper issued on the same day. It also noted that a period of 21 days would elapse before the designation of the NPS took place. In the event this 21-day period was extended to take into account the summer recess, so that the NPS was finally designated by the Minister for Business and Industry on 17th October 2019 by means of a written ministerial statement (Parliamentary Record Statement Vol.666, HCWS18).