

ARTICLE 31 PLANNING DECISIONS IN NORTHERN IRELAND – LEGISLATIVE BACKGROUND AND PROCESS

This paper outlines the legal basis and key stages in the planning process for major developments in Northern Ireland, particularly in reference to the recent Giant's Causeway application.

Introduction

Application of Article 31 of the Planning (Northern Ireland) Order 1991 relates to major planning applications where the Department considers a proposal to meet certain criteria which make the project of potentially greater significance (strategic significance, potential environmental impacts and the scale and nature of the proposals) than could be dealt with effectively using the normal planning process.

The Department's consultation document¹ describes the usage of Article 31 as "controversial...regarded by the development industry as a major source of delay in the planning system...and by reserving the final decision-making to the Department, it is seen as removing the applicant's right of appeal, although judicial review is available as a remedy".

This paper outlines the legislative background to Article 31 planning applications in Northern Ireland and the key stages in the planning process which would apply to a major planning application, such as the Giant's Causeway application. Much of the paper draws on the information provided in the Department of the Environment's Information Leaflet No. 8 *Handling of Major Planning Applications: Article 31 cases*.

Legislative background

Article 31 of the Planning (Northern Ireland) Order 1992 enables the Department to treat certain defined cases of planning applications as 'major applications'.

¹ Modernising Planning Processes: A Consultation Paper. February 2002. Available at: www.planningni.gov.uk/corporate_services/planningtodeliver/mpp/mpp_consultation.pdf

² Available at: <http://www.statutelaw.gov.uk/content.aspx?LegType=All+Legislation&title=planning+order&Year=1991&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&sortAlpha=0&TYPE=QS&PageNumber=1&NavFrom=0&parentActiveTextDocId=3139738&ActiveTextDocId=3139784&filesize=4991>

These ‘major applications’ include those where the permission if sought would, if permitted:

- involve a substantial departure from the development plans for the area to which it relates; or
- be of significance to the whole or a substantial part of Northern Ireland; or
- affect the whole of a neighbourhood;
- consist of or include the construction, formation, laying out or alternation of a means of access to a trunk road or of any other development of land within 67 metres of the middle of such a road, or of the nearest part of a special road;

The legislation provides for the Department to “cause a public local inquiry to be held by the planning appeals commissions” (Part 31.2), and states that “the decision of the Department on an application to which this article applies shall be final” (Part 31.5).

The Article 31 process

Following the Department’s consultation paper *Modernising Planning Processes (MPP)* published in 2002, the Department undertook to³:

- introduce revised processes for handling Article 31 applications;
- publish supplementary criteria and guidance explaining the application of Article 31;
- reduce the number of Article 31 applications under consideration by 40% by March 2004;
- publish revised targets regarding the processing of Article 31 applications in the Agency’s 2004/05 Corporate and Business Plans;
- immediately cease the practise of routine consultation with statutory consultees on the Planning Appeals Commission’s Report; and
- immediately implement a procedure to provide written reasons for the Agency’s final decision.

In deciding whether to apply the Article 31 procedure to specific planning applications the Department use the following criteria⁴:

- the strategic significance of proposals
- the environmental significance of proposals
- the scale and nature of proposals

³ Available at:

www.planningni.gov.uk/corporate_services/planningtodoliver/mpp/omplementation_plan/mppi_p_dealing_with_planning_applications.pdf

⁴ Handling of Major Planning Applications: Article 31 Cases. DoE Planning Service Information Leaflet 8.

Factors taken into account in the assessment of strategic significance, environmental significance and ‘scale and nature’ significance

Strategic Significance

The Department state that they will apply Article 31 procedures to applications that raise issues of ‘strategic significance’ to Northern Ireland as a whole, or to a substantial part of the region. In making this assessment the Department take account of ⁵:

- the relationship of the proposal to the Regional Development Strategy (RDS)
- its contribution to the broader policies and objectives of Government
- any significant implications beyond NI.

In deciding whether or not to apply Article 31 procedures to specific projects which might include major economic or infrastructural developments, the Department state they “will take account of the scale of the proposals and their significance in contributing to the implementation of the RDS.

Assessment of Environmental Effects

Judgements as to what constitutes ‘environmental effects’ and thus the cases to which Article 31 should be applied must be informed by the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999 and the Department’s published guidance in Development Control Advice Note 10 – Environmental Impact Assessment (DCAN10).

The Environmental Impact Assessment Regulations identify two categories of development providing for mandatory (Schedule 1 cases) or discretionary (Schedule 2 cases) EIAs.

Article 31 procedures are applied to planning applications which are Schedule 1 developments or Schedule 2 developments of a scale which means that they would have wide-ranging environmental effect and be of more than local importance.

The Scale and Nature thresholds in assessing the applicability of Article 31

The third criterion against which the application of Article 31 processes is considered are the “scale and nature” of the development. Article 31 applies where the scale and nature are of more than local importance and which have impacts beyond local areas.

According to the Department, precision on application of Article 31 on the basis of floorspace is difficult. Their floorspace limits as indicative of the scale of development to which it may apply Article 31 procedures includes:

- developments exceeding 15,000 sq. metres gross floorspace

They add “in exceptional circumstances the Department may apply Article 31 procedures to developments below these limits...for example, where development is proposed in a sensitive location, or where a number of competing proposals are

⁵ Handling of Major Planning Applications: Article 31 Cases. DoE Planning Service Information Leaflet 8.

made to meet a specific regional or sub-regional need and it is necessary to undertake a comparative assessment.”

Process for determination of Article 31 applications

There are two options following assigning Article 31 status to an application:

- (1) Notice of Opinion - Serving an applicant this within 2 months specifying whether the application is approved or refused, or;
- (2) Public Local Inquiry – held by the Planning Appeals Commission (PAC) to consider representations and report on the outcome of the enquiry. The Department “shall, in determining the application to which the Article 31 procedures have been applied, take the report of the PAC into account. The decision of the Department on Article 31 applications is final”.

According to the Department the process route in the vast majority of cases can be determined on the basis of current plans and policies, taking into consideration the views of consultees, the public and elected representatives in addition to the often considerable body of information available through the application process.

A key test for the Department in deciding the process route will be whether a public local inquiry is necessary to provide all the information to enable the planning decision to be taken.

Further information is available in the Department of the Environment’s Information Leaflet No. 8 *Handling of Major Planning Applications: Article 31 cases*.

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