

NATIONAL INFRASTRUCTURE &
DEVELOPMENT PLANNING REVIEW: **CAN
DEVELOPMENT CONSENT ORDERS HELP
MEET THE CHALLENGES OF OUR TIME?**



INTRODUCTION



Ten years after the Planning Act 2008 was introduced, we brought together a small group of experienced DCO practitioners - Barton Willmore, Womble Bond Dickinson and Copper Consultancy – to undertake some in-depth research into whether this new way of consenting Nationally Significant Infrastructure projects (NSIPs) through the granting of Development Consent Orders (DCO) had been a success.

To focus this review, we set ourselves three **questions**:

- Q1 Has the DCO process successfully realised its intended benefits?
- Q2 How could it be enhanced for the benefit of projects and communities?
- Q3 Could it have broader application, beyond the infrastructure sectors it was designed for?

We began by reviewing the research and reviews already undertaken on the DCO process as well as the wider TCPA process in relation to planning for large scale housing and new settlements.

Findings from this review were then used to inform a widely publicised survey and in-depth interviews with a range of **recognised practitioners and experts** in both infrastructure and town and country planning. The final element of our research focused around some further testing of our findings via two workshops, to explore our questions in a group setting.

This research process was a very interesting learning curve for us, even as leading practitioners in the DCO process, giving us the opportunity to reflect on findings at each stage and subsequently challenge our thinking. Our findings distil the main themes from our research; our recommendations then come from our collective analysis and expertise.

Contributors included:

- RTPI
- The Planning Inspectorate
- Crest Nicholson
- Taylor Wimpey
- Highways England
- National Infrastructure Commission
- Vattenfall
- Grosvenor
- Mott MacDonald



FINDINGS

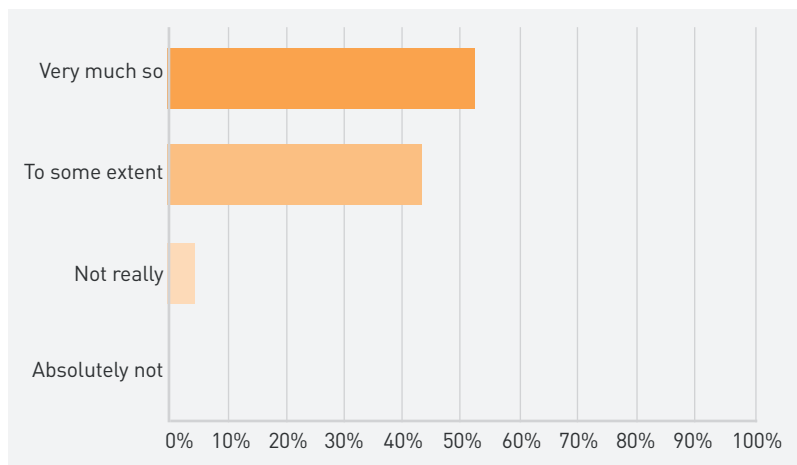


We found that both DCO practitioners and those aware of, but working outside the DCO process, recognise the value of interrogating its successes, challenges and wider applicability.


Below we set out our main findings against our three research questions.

Q1. Has the DCO process successfully realised its intended benefits?	Q2. How could it be enhanced for the benefit of projects and communities?	Q3. Could it have broader application, beyond the infrastructure sectors it was designed for?
<p>The DCO process has indeed been successful in achieving many of its intended benefits.</p> <p>Some areas that have been successful however could still be improved. See next column.</p>	<p>There are specific areas for improvement within the DCO process.</p> <p>What is clear to us is that matters such as local authority funding and the use of artificial intelligence are likely to be complex and the subject of on-going debate, and we feel the DCO industry needs to continue to drive and engage in these debates.</p>	<p>The DCO is not designed to handle the spatial complexities of developments such as new settlements by itself. It may be an effective delivery mechanism, but it functions in a “silo” and does need to be integrated with wider spatial planning;</p> <p>Crucially, promoters of complex developments under the Town and Country Act (TCPA) regime wish to have a choice on the appropriate consenting route.</p>
<p>MAIN SUCCESSES</p> <ul style="list-style-type: none"> ◆ Provides certainty in the process with clear timescales; ◆ Effectively uses the pre-application stage; ◆ Benefits from the introduction of Compulsory Acquisition Powers; ◆ Provides certainty around national need through National Policy Statements (although quality and currency of some was questioned). 	<p>MAIN AREAS FOR IMPROVEMENT</p> <ul style="list-style-type: none"> ◆ Address issues around flexibility by making post DCO changes more user friendly and giving certainty on their timescales; ◆ Provide greater resources especially to Local Authorities and statutory consultees both during the DCO process and in discharging requirements; ◆ Enhance the fairness and quality of pre-application engagement; ◆ Consider the use of technology and artificial intelligence. 	<p>CORE FINDINGS</p> <ul style="list-style-type: none"> ◆ You cannot take the politics out of housing and jobs; ◆ The DCO process can help with delivery; ◆ One size may not fit all – and people want choice.


HAS THE DCO REGIME MET ITS ORIGINAL INTENTIONS?



In total, **95%** of respondents believed the regime had to some extent or fully met its original intentions. Of those intentions:

86% considered it provided certainty of timescales and speed 

52% considered it gave the opportunity for combined consents 

48% considered it provided certainty of decision 

Each element of our research reinforced the finding that the DCO process has delivered on its intentions particularly with regards to certainty, and that there are some key principles that have enabled that, notably:

- ◆ Timescales
- ◆ The National Policy Statements
- ◆ Pre-application engagement process
- ◆ Compulsory Acquisition Powers

However, in respect of its scope for improvements our surveys found the following:

- ◆ **62%** of respondents sought more flexibility for post-consent approvals.
- ◆ **57%** wanted flexibility to make amendments during examination.
- ◆ **64%** of respondents also sought a clear process for amendments with defined timescales.

In response to our findings on scope for improvements we have pooled together our thoughts in Recommendation One overleaf. Our research highlighted a key issue for the DCO process is its **lack of 'spatial moorings'** and suitability for large scale, one-off projects. We think this is critical to consider when looking at its scope for wider use, particularly for complex long-term developments such as new settlements.

When asked about the **scope for extending the DCO process**, participants fell into three distinct camps: instinctively positive; instinctively open but circumspect; and instinctively hostile.

We think this reflects both a challenge and an opportunity for Government.

Although not surprising, the research reinforced the fact that national infrastructure and strategic development planning processes **operate in silos**, meaning infrastructure and strategic developments planning are not effectively integrated.

We therefore believe there is both the **need and opportunity for leadership** to bring together infrastructure and strategic development planning processes and delivery models, to ensure they complement and continuously learn from each other.

This approach could be a game changer for how we capture the benefits of infrastructure investment as widely as possible, unlocking sustainable housing and job creation across all regions.

RECOMMENDATIONS – THE OPPORTUNITIES FOR GOVERNMENT



MHCLG is at the heart of the planning process, and through its stewardship of the DCO process has a network with all the key Government departments and their delivery agencies.

We consider that MHCLG is therefore well placed to address the disconnect between DCO and TCPA processes, to facilitate the involvement of a wide range of internal and external stakeholders and establish a coherent framework that helps connect the infrastructure and strategic planning worlds. This view underpins each of our recommendations.

It remains a challenge to integrate infrastructure, housing and jobs at different spatial scales, so that all can be delivered in the national, regional and local interest, in ways that also address the issues of our time, including climate change, regional inequalities and place making.

We hope this research provides a strong framework through which to explore these questions collaboratively. With thanks to everyone who has participated in the research, we look forward to sharing our full report in due course.





RECOMMENDATION 1

To reinforce and enhance the certainty that the DCO process provides by:

- ◆ Legislating to review NPSs every 5 years to maintain an up-to-date, comprehensive national need case, and assessment criteria, that tie in with the National Infrastructure Assessment;
- ◆ Empowering Local Planning Authorities to participate fully and effectively through the pre-application, examination and post-consent stages;
- ◆ Enhance flexibility within the regime both during examination and for post consent changes;
- ◆ Accelerating the use of technology, to improve the efficiency and effectiveness of the process and the quality of projects.



RECOMMENDATION 2

Capitalise on the success of 'certainty' in the DCO process created by the Planning Act timescales, the National Policy Statements, pre-application engagement and compulsory acquisition, by applying the principles to other consenting regimes, and allowing its use in the consenting of new settlements and large scale complex developments to help de-risk and facilitate long term investment.



RECOMMENDATION 3

Explore the extension of the DCO process for new settlements and other complex developments by preparing a National Spatial Settlements Strategy that:

- ◆ Identifies broad parts of the country suitable for new settlements / large scale developments (developed under DCO engagement principles with input from Local Authorities and devolved administrations);
- ◆ Enables different consenting and delivery models to be applied;
- ◆ Incorporates the DCO as a consenting model;
- ◆ Is drafted to provide the national needs case that gives certainty, to unlock significant financial investment from the UK and internationally
- ◆ Is developed alongside amendments to the Planning Act 2008 to give the NSSS equivalence with the National Policy Statements.



IAIN PAINTING
 SENIOR PARTNER, BARTON WILLMORE
 iain.painting@bartonwillmore.co.uk
 0207 446 6888
 07713 083099



KEVIN GIBBS
 SENIOR COUNSEL – HEAD OF STRATEGIC PLANNING,
 WOMBLE BOND DICKINSON (UK) LLP
 kevin.gibbs@wbd-uk.com
 +44 117 989 6930
 +44 7738 785671



BEN LEWIS
 INFRASTRUCTURE AND
 ENERGY DIRECTOR, BARTON WILLMORE
 ben.lewis@bartonwillmore.co.uk
 0292 066 2913
 07391 866 880



ANDREW WEAVER
 DIRECTOR OF INFRASTRUCTURE,
 COPPER CONSULTING
 0117 929 0366
 07880 033610



TOM CARPEN
 INFRASTRUCTURE AND
 ENERGY ASSOCIATE, BARTON WILLMORE
 tom.carpen@bartonwillmore.co.uk
 0117 9299 677
 07795 567 529



HANNAH HICKMAN
 DIRECTOR, HANNAH HICKMAN CONSULTING
 hannah@hannahhickman.co.uk
 07818 024594



Desk Top Publishing and Graphic Design
 by Barton Willmore.

This artwork was printed on paper using fibre sourced from sustainable plantation wood from suppliers who practice sustainable management of forests in line with strict international standards. Pulp used in its manufacture is also Elemental Chlorine Free (ECF).

© The contents of this document must not be copied or reproduced in whole or in part without the written consent of Barton Willmore.

