

Planning and the Data Centre Landscape

Charlie Banner KC, 21st October 2026

Application for planning permission under s.70 of the Town and Country Planning Act 1990

- Application is to the local planning authority ('LPA')
- Appeal to the Secretary of State (who can also 'call in' the application)
- With a co-operative LPA, permission at local level can be quicker than a DCO
- Vulnerable to politics (notwithstanding the National Scheme of Delegation)
- Appeal timescales are slow, worsening and unpredictable due to the Planning Inspectorate's workload

Development Consent Order under the Planning Act 2008

- Application is directly to central government
- Can include compulsory acquisition of land or rights
- Clearly defined timescales for the examination (6 months + 3 months reporting) and determination (3 months post-receipt of examination report) of the application (and for legal challenges thereafter)
- Front-loaded and expensive process – but bypasses local politics

Special Development Order under s.59 of the Town and Country Planning Act 1990

- The 'wild card' option post Universal Studios

Which process? Recently modified law and guidance



The default

- Data centres fall within the TCPA regime; but
- Energy generation over 50MW falls within the DCO regime.
- Meaning that the default for many data centres is two processes for one project.

Opting out of the TCPA s.70 planning permission process in into the DCO regime

- Direction under Section 35 of the Planning Act 2008 – recently extended to cover data centres (see the Infrastructure Planning (Business or Commercial Projects) (Amendment) Regulations 2026)
- Eg [Data Centre Campus, Wapseys Wood, Buckinghamshire: Section 35 Direction, Planning Act 2008 - GOV.UK](#)
- Broad discretion: see *R (Ross & Sanders) v. Secretary of State for Transport* [2020] EWHC 226)(Admin)
- Needs representations + political engagement
- Need to be careful not to be over-prescriptive or else this will limit later design flexibility

Opting out of the DCO regime into the TCPA s.70 (planning application) or s.59 (SDO) processes

- Section 35B of the Planning Act 2008 (introduced by the Planning and Infrastructure Act 2025)
- Accompanying guidance suggests “unabated fossil fuel projects” will not be considered appropriate for a s35B direction other than in “exceptional circumstances”

Legal context:

- Section 38(6) TCPA 1990 (for s.70 planning permission)
- Section 104 Planning Act 2008 (for DCOs)

Forthcoming Data Centres National Policy Statement ('NPS')

- Will to set out the policy framework for decision-making in relation to data centre DCOs, including considerations relevant to s.35 directions (eg size thresholds)

Other relevant NPSs include:

- EN-1 – overarching NPS on energy
- EN-2 – natural gas generation projects
- EN-3 – renewable energy

National Planning Policy Framework

- Annex A para 2: “very limited weight” to development plan policies that conflict with the NPPF
- Policy S4: universal presumption in favour of development within settlements (overcome only where the adverse impacts of granting permission “*substantially outweigh*” the benefits
- Policy S5(1)(j): outside settlements, the same presumption applies for development that would “*address an evidenced unmet need*” – as to this see Policy E2 (the red text is my emphasis:

“Where a development proposal is required to demonstrate whether an unmet need exists (including under policy S5) consideration should be given to whether:

*a. **Market signals indicate an undersupply** of specific types of business land or premises, taking into account the anticipated catchment area for the **type of development proposed**, the changing needs of different sectors and the availability of suitable **existing** land and buildings; or*

*b. The specific locational requirements of the proposal are met by **existing** allocations in the development plan. This includes, but is not limited to, situations where:*

*i. **Existing businesses plan to expand or improve their premises, or clusters or networks of businesses need to grow (such as clusters of knowledge and data-driven, creative or high technology industries and associated facilities and infrastructure); or***

*ii. **The availability of infrastructure (such as electricity network infrastructure to provide adequate grid connections, or water and wastewater capacity) makes certain locations particularly important, including opportunities to co-locate large-scale generators and users of power (such as data centres);”***

Development Plans at local level

- Few (if any) have specific data centre allocations / requirements, as opposed to general employment or B2/B8 allocations / requirements.
- This may make it easier to run an NPPF para S5/E2 “*evidenced unmet need*” case.
- Anyone in the DC world with an interest in an emerging local plan should consider whether to seek specific DC allocations .

- **Need**
- **Alternatives (location and size)**
- **Landscape/townscape and visual impact** (the new NPPF is helpful in this respect)
 - Beware of squeezing too many pips out of a site!
- **Ecology**
 - Ditto (NB ancient/veteran trees require 'wholly exceptional reasons' for their removal)
- **Energy**
 - Consider phased transition to green energy with binding trigger points
- **Water**
- **Loss of existing use or an extant permission or allocation for an alternative use.**