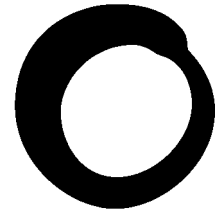


December 2007



**Friends of
the Earth**

Briefing

Planning Bill

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The Planning Reform Bill explained

What is the Government up to?

The Government has just published its Planning Bill, and the Second Reading took place on the 10th December 2007. This is when the Secretary of State presents the Bill and outlines the Government's position. The Committee examining the Bill will sit throughout January and finish on the 5th of February 2008.

The Planning Bill contains several extremely worrying proposals on the planning around Major Infrastructure Projects. These are further explained here.

What are National Policy Statements?

The Secretary of State would draw up National Policy Statements. These would separately describe policy around power generating stations, roads, airports, ports, waste, rail, waste water, reservoirs, and hazardous waste. They may also be site specific. The Bill also wants to be able to allow the Government to designate existing papers (such as the one on Aviation) as National Policy Statements. The Bill says that decisions must be made in 'accordance' with these National Policy Statements unless there are exceptional circumstances.

What is the Infrastructure Planning Commission?

The Bill provides an unelected body (the Infrastructure Planning Commission) with extraordinary and unprecedented powers to change or ignore primary legislation and to change local Acts (which are also primary legislation) where 'expedient'. In each case, such actions can be taken without any reference to Parliament. The Secretary of State's only power is to give a direction in very narrow circumstances where the changes would be contrary to European Law or the European Convention of Human Rights. Therefore for the first time in the UK, a body of people unaccountable to the public would have huge influence over the future development of the country.

The proposed Commission would not be directly accountable to Parliament or even a Minister for individual decisions. It would be made up of 'experts' rather than being part of the independent Planning Inspectorate.

What are my opportunities to be involved?

The National Policy Statements are subject to public consultation. They may however be site specific. At the moment, if your property is affected by development (as it may be) you have a right to have your say in a public inquiry either at the local plan stage, or at the inquiry for the application for development itself (except in the case of roads).

Once an application is made there is presumption that the inquiry will operate through written representations. This inevitably favours those with access to written professional expertise and against those less familiar with formal proofs of evidence. There is no automatic right to an oral hearing. There is an 'open floor' session instead but this is essentially an opportunity to 'say one's piece'. There are no rights to cross-examine or ask questions and no obligation for other parties (including the developer) to even be present. It does not provide the opportunities available now to really test the evidence.

How does it work at the moment?

Most major infrastructure inquiries¹ allow people to take part in an oral inquiry and, importantly, to question those promoting the project – the developers. This allows the Inspector hearing the inquiry to reach a view as to the strength or weakness of the developer's evidence. Removing this 'right to be heard' not only strips the process of its legitimacy but also means that the people deciding on the major applications will be deprived of a hugely significant opportunity to test the evidence. This will be a big problem when the time for inquiries becomes drastically shortened under the Bill. Experience shows that detailed public scrutiny leads to better evidence being presented, and the improvement of projects that do go ahead.

Wales

The new structure is only relevant to Wales in terms of power stations over 50MW. This is quite possibly due to the Government's commitment to nuclear power and the wish to rebuild nuclear power stations in Wales. The Welsh Assembly currently does not support the development of nuclear power.

What are the key messages?

- Planning is essential for the UK to meet the challenge of climate change.
- We need to make sure that big projects help us to reduce carbon emissions.
- Big decisions on major projects must be accountable to Ministers.
- People must have a meaningful right to be heard in relation to major infrastructure projects which affect them and their communities.
- Public inquiries for major infrastructure projects provide an effective system of testing evidence and are trusted by the public.
- Delays in those public inquiries are not caused by community participation or the right to be heard but by badly planned applications and by Ministerial delay.

Moving to a low carbon Britain means that we need to address:

- Climate change: by ensuring that National Policy Statements and that major infrastructure projects are designed to reduce carbon emissions
- Energy: by setting out a vision for a low carbon energy production by strong encouragement for renewable technology
- Environment: by ensuring that our infrastructure does not rely on the destruction or over-exploitation of natural resources from overseas, and that the environment in the UK is protected and biodiversity enhanced.

¹ Infrastructure applications are dealt with under a number of consent regimes. It is important to acknowledge that the process for determining major road schemes does not contain statutory rights for you to appear.

Local planning and climate change

The draft Bill requires Local Authorities to ensure that their local planning policies are designed to address climate change. This means that your local authority will need to contribute to the reduction of carbon emissions. They will also need to start adapting to climate change by addressing issues such as flooding.

This is a very welcome development which we support.

What changes do we need in the Bill?

We are campaigning for the following three main changes to the Bill:

- A binding duty on decision makers to ensure infrastructure decisions serve to contribute to reducing carbon emissions
- A meaningful right to be heard in person throughout infrastructure inquiries
- An accountable decision making body

Question and Answer

Q. How can we really put climate change first?

A. The Government should set a binding duty for decision-makers to seek to reduce carbon emissions when planning and approving major projects. We need to ensure our infrastructure makes it easier for us to travel, use energy and resources without needing to burn huge amounts of fossil fuels.

Q. Wind energy and planning – what's the problem?

A. There is a perception that planning is a barrier to renewable energy. This may have been true in the past but recent development have changed this picture. Most onshore wind farms are under 50 megawatts and so will not be affected by the Planning Bill. The Planning Policy Statement on Climate due in December 2007 will transform the way planners think on climate and renewable energy and will effectively create a much more positive environment for all kinds of renewable energy. Large scale renewable energy schemes are vital but imposing them on communities will create a counter productive backlash. We need to examine these projects at inquiry to ensure that they are properly planned.

Q. Is this about building nuclear power stations?

A. The Government has already stated a commitment to nuclear power, before it decided to consult on whether nuclear power is a safe, efficient, and cost-effective option. The refusal of the Government to devolve power generating stations to Wales over 50MW is a possible indicator that the Government wants to impose the nuclear option on Wales.

Q. What is the most common cause of delay in decision-making?

A. The Government has produced no comprehensive research about sources of delay in the process, nor ever made clear what they mean by 'delay' as opposed to the time it takes to properly examine a proposal. In terms of the delay of Heathrow Terminal 5, the applicant's lack of preparation and subsequent changes to the

application, along with Ministerial thinking time, were key causes. It is significant that the Terminal 5 promoter used more than half the total inquiry time. The public inquiry is only one aspect of the overall development process. Getting the land and money together presents a much greater source of delay than your involvement in the inquiry.

Q. Will these proposals make it harder for people to engage in inquiries?

A. Yes. They will limit involvement in National Policy Statements to a difficult to understand consultation process. They will limit involvement in inquiries to written representations, cutting out disadvantaged and hard to reach communities. The open floor session will be too easily dismissed because it will not be part of the main discussions around the proposal.

Q. Is there any justification for giving an unelected body power unprecedented in our constitutional history?

A. There is no justification for the remarkable powers proposed to be given to the Infrastructure Planning Commission. The suggestion that an unelected body should be given powers to change legislation without any parliamentary oversight is totally unconstitutional.