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**Friends of
the Earth**

Briefing

Question and Answer on the Planning Bill

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Question and Answer on the Planning Bill

The Government has not provided a reasonable and fair reflection of the Planning Bill in response to concerns over participation, accountability, and sustainability raised by MPs and the public. The Government have refused to make any amendments which would ensure that people's rights are safeguarded – to the extent that the possibility of legal challenge is very likely should the proposed process come into force. Friends of the Earth's position is based on extensive analysis and legal advice, and none of the facts we have presented have been disputed. Our legal opinion, evidence to the Planning Bill committee, and clarification to the same committee on the Minister's evidence, and other analysis is available on our web site www.yourplanningrights.co.uk under Resource.

1. Does the Planning Bill reflect a real commitment to climate change?

The Planning Bill only requires **local planning** to address climate change. Clause 151 of the Bill states that development plan documents (taken as a whole) must: "include policies designed to secure that the development and use of land in the local planning authority's area contributes to the mitigation of, and adaptation to, climate change". There is **no similar requirement** for national policy statements or decisions made by the Infrastructure Planning Commission around any of major infrastructure projects listed in the Bill. We are putting forward an amendment to correct this situation.

2. Does the Planning Bill propose a faster system?

The Planning Bill does unify consent regimes, and this unification is supported. This makes it simpler for people to participate in the decision, and for the developer to bring together all the information required to accompany an application in one place. The rest of the Bill, by removing the right to be heard and the existing public inquiry process for major infrastructure risks public protest, drawn out legal challenge, and the approval of poor, expensive, and difficult to deliver projects.

Average sitting times in 2007 were, for example, 22.5 days for planning inquiries on Transport. This is not a 'long time' if people are to make their representations in person, for witnesses to be heard to give evidence, and for the proposals to be properly examined. Over 60% of these transport inquiries were under this number of days – a few more complicated projects took longer to examine.

3. Does the Planning Bill propose a democratically accountable and fair system?

Under the current system, the Inspector running the inquiry makes a recommendation to the Secretary of State. Therefore this is a democratically accountable decision.

Under the new system there is a "two-stage" decision process because the first decision is made in a National Policy Statement, and the second decision is made at the Inquiry by the unelected, undemocratic Infrastructure Planning Commission. For instance, the Aviation National Policy Statement may outline site specific areas for growth such as Heathrow. This is already a "decision" about where development should happen in principle, without a proper right to be heard for those living near Heathrow. Then a second decision is made at the Inquiry, again with no right to be heard apart from through written representations and an open floor hearing on the

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actual proposal for that site. The open floor hearing is not the same as the right to participate fully in the Inquiry as exists at the moment.

There is no way that this process can be described as “fairer” than the existing system, where people do have a right to be heard in person, and pre-emptive decisions are not made by national policy.

4. Does the Planning Bill propose a cheaper system?

The new system as proposed will not save costs if climate change is not considered, nor will it necessarily deliver a faster process.

The Infrastructure Planning Commission is not obliged to take account of climate change in the Bill as it stands. The Stern Review says the economic costs of inaction on climate change would be equivalent to losing 5 to 20% of global GDP each year, “now and forever”. By 2050, 5% of global GDP is £5000 billion a year.

The assumption in terms of cost savings and benefits is that there will be no increase in judicial reviews. However, there is consensus that the likelihood is that there will be increased vulnerability to judicial reviews, specifically because of a withdrawal of the rights that exist in the current system. It is likely that people will consider their only opportunity to have their case heard is to bring judicial review proceedings. If that assumption is correct then the stated benefits said to arise from reduced delay may either be significantly overstated or non-existent. It may even be the case that increased recourse to judicial review would increase the overall length of the planning process. That would arise in part as a result of the extreme delays currently being experienced in the administrative court where an application for judicial review regularly takes more than one year from application to final hearing – and often considerably more. It is notable that that timescale is greater than many planning inquiries.

The costs of removing rights to be heard in public inquiries could result in widespread dissent and lack of public legitimacy, leading to protest and increased policing costs.

5. Will the Planning Bill deliver low-carbon energy infrastructure?

There is no evidence that low carbon energy infrastructure has been delayed under the current system.

There are delivery issues around projects under 50 MW but the Planning Bill does not make changes to decision-making on projects of this size and they will remain for local authorities to decide, and if the developer appeals, for the Inspectorate to decide.

The Government’s Planning Bill does not contain any consideration of climate change either in the national policy statements or in decision-making by the Infrastructure Planning Commission. There are expected to be around 45 projects a year which will therefore go ahead including: all types of power stations (nuclear, gas, coal, as well as wind and tidal); gas storage; roads; airports; pipelines; harbours; railways; reservoirs; hazardous waste facilities. Of these, many will be emitters of tonnes of carbon dioxide, locking the UK into intensive energy use for years to come.

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6. What rights to be involved in the process of decision-making does the Bill provide?

The Bill provides one additional formalised opportunity for consultation which does not exist in the current system, which is largely meaningless because it is organised by the developer who is not an independent arbiter. The Infrastructure Planning Commission default position is not to run an inquiry as such, but to accept written representations. There is no right to be heard throughout the inquiry – if people express a wish to make oral representations, there will be an “open floor” session. It is up to the Commission as to whether people can make an oral representation at relevant stages in the inquiry, so it is not a ‘right’. There is no requirement for the developer to be at this open floor session.

Currently people can participate in the inquiry by making oral representations, questioning witnesses and bringing their own experts forward to question the experts presented by the developer.

7. What is the role of a Minister in decision-making on major infrastructure projects?

The role for Ministers is not misunderstood. People believe, and rightly, that their Ministers are democratically elected and therefore accountable, in the end, to them. When a Minister, as happens now, makes a decision on major infrastructure projects, it is an administrative decision, but made in the full knowledge that the decision can be scrutinised by Parliament, and that responsibility is with a democratically elected representative to make a decision on behalf of the electorate.

Under the new regime, people appointed by the Government, who are possibly experts in certain fields, are appointed to be Commissioners. They have no responsibility towards the electorate. They will not necessarily have any experience of running major inquiries. They may be largely biased towards their own area of expertise. The Planning Inspectorate’s most senior Inspectors run major inquiries at the moment, generally with around 10 or more years of experience, and a significant amount of time in public service, thereby largely reducing the possibility of bias.

8. What if the decisions made by the Infrastructure Planning Commission are seriously flawed?

Only wealthy people and organisations would consider taking the Commission to court. The Government’s position demonstrates their lack of consideration for the huge majority of people in the UK who cannot afford to go to Court to make challenges. It also demonstrates their willingness to put safeguards on the unelected, unaccountable Commission which are extremely weak.

For more information, please contact Naomi Luhde-Thompson, Planning Co-ordinator, Friends of the Earth.