Government shake-up of the planning system: a threat to democracy and civil rights
Introduction

In December 2001 the Government published two documents of vital importance to the future of the land-use planning system. The first was a Green Paper on the reform of the local planning system(1). The second was a consultation paper on the procedures for the approval of major infrastructure projects(2).

These two documents represent the most significant erosion of civil rights in planning by any Government since the system was introduced in 1947. The measures are ill-considered, administratively chaotic and will reinforce the powers of those with property interests to the exclusion of individuals and communities fighting to have their voice heard.

Friends of the Earth is campaigning to defend the public’s right to participate in the planning process at national and local level.

The Green Paper is the result of a powerful and concerted business lobby led by the Confederation of British Industry (CBI). This lobby believes that reducing policy and removing the public’s rights will give it free rein to control the planning process. The Government has failed to recognise that business is already in a dominant position, making by far the greatest number of objections to local plans. Instead, Government is intent on a system where only those with an interest in property can have a real right to participate.

Friends of Earth wants positive change and made a series of constructive proposals to Government prior to the Green Paper. These were based on reforming the process to make it more accountable, transparent and participatory and focussing the objectives of planning on sustainable development.

At a national, regional and local level Friends of the Earth, including our network of over 200 voluntary groups, regularly engages with the planning system. This briefing paper sets out our key concerns on Government proposals to reform planning which we are distributing to local government, Members of Parliament and local campaigners to inform their views and encourage their participation in these consultation processes. We will be submitting detailed responses to the Green Paper and major infrastructure projects in due course.

To find out more about Friends of the Earth’s Planning Campaign, including press releases and briefing materials, write to:

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Note: The Green Paper applies only to England. Different planning regimes exist in Scotland and Northern Ireland. The National Assembly for Wales will be issuing a separate consultation document on the planning system in Wales. The major infrastructure projects also applies to England only.
What does the Government’s Green Paper propose?

- Structure Plans, Local Plans and Unitary Development Plans (UDPs) will be abolished.
- Shire counties will lose their planning powers to new non-elected regional bodies.
- Local plans and UDPs will be replaced by broad-brush Local Development Frameworks (LDFs).
- Local authorities will have the discretion to prepare more detailed action plans for neighbourhoods, towns centres and conservation areas.
- Individuals who make an objection will lose the right to be heard at a local plan public inquiry.
- New business zones will be introduced where developers will not have to apply for planning consent.
- Important national policy (for example Planning Policy Guidance notes) on issues like nature conservation will be slimmed down.

How will major projects be affected?

- Parliament will be able to grant permission for a wide range of projects including large scale quarrying and opencast mining, chemical plants and roads over 30km.
- Local people will no longer have the right to challenge at public inquiries the principle, need or location of major developments.
- Public inquiries will still take place but will be tightly restricted to matters of detail.

Why are these changes so damaging?

The loss of civil rights

An individual objector currently has the right to address a local plan public inquiry. They can talk directly to a Planning Inspector and cross-examine Local Authority officers and developers. But the Government claims that this is “time consuming and adversarial”\(^{(3)}\). It proposes that public consultation should be based on informal hearings or examinations. At present examinations in public are by invitation only. This will replace a tangible and legal right for the public to participate with an ill-defined set of opportunities to be “involved”. The Green Paper suggests that only those with property interests directly affected by a plan will have the right to be heard in public\(^{(4)}\).

Proposals for major infrastructure projects are equally draconian. An individual or group will no longer be able to challenge the principle, need or location of a development at a local public inquiry. These inquiries will still take place but their remit will be restricted to the “precise alignment and layout of the proposal, land take, mitigation measures, conditions and legal agreements”\(^{(5)}\). In short, local people would have no opportunity at the inquiry to discuss issues of any significance.

The Government's assertion that there are new opportunities for the public to be involved in this process is simply false\(^{(6)}\). The right to lobby an MP is not the same as the right to give detailed
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evidence directly to a Planning Inspector and to test that evidence in cross-examination. Neither is Parliament best placed to consider the detailed impact of local infrastructure projects.

Parliament is also not necessarily best placed to consider the detailed impact of site-specific infrastructure projects. Parliament must of course be free to set general policy and Friends of the Earth would welcome coherent Government statements on important issues, such as the future of aviation. Deciding the detail of major infrastructure projects is an entirely different matter.

The Government has stated that Parliament will only consider issues of principle, but these issues are intimately related to the nature of the environmental impacts of an individual proposal. Legal opinion obtained by Friends of the Earth has also confirmed that environmental impact assessments would be required before Parliament could give development consent.

Most worrying of all, Lord Falconer made clear in his evidence to the Transport, Local Government and Regions Select Committee that in some cases voting would be enforced: “I would imagine that in some cases it will be whipped business, yes, but Parliament is still able to scrutinise it”(7). Such a view cannot give the public confidence that Parliament will provide an impartial tribunal at which their views and concerns can be fairly represented.

While the Government's attempt to remove basic civil rights from the planning system is unacceptable, it is also profoundly disappointing that the Green Paper has ruled out any consideration of introducing a third party right of appeal. New third party rights could be administratively simple, legally practical and morally right. Introducing such a right could be a strong signal of the Government's commitment to increase public participation in the planning system(8).

Rights to participate must also be backed by resources to empower local people to engage in the planning process and Friends of the Earth welcomes the proposal in the Green Paper for a planning advocacy service which could support such community involvement. But the Government’s Green Paper commitment to expand planning aid does not include a clear indication of a well-funded, independent advocacy service.(9)

The erosion of democracy

Democratic accountability has been fundamental to the planning system since its creation in 1947. Representative democracy, innovative public participation schemes and robust rights of redress should form the basis for reinvigorating the planning process. But instead, the Green Paper seeks to strip powers from directly elected County Councils and Unitary Authorities and hand them to unelected regional planning bodies. The membership of these bodies is not made clear. But Lord Falconer confirmed in his evidence to the Select Committee that the Secretary of State would have the final veto on their membership.

The Government also highlights the role that Local Strategic Partnerships (LSPs) will play in the role of community involvement(10). Such organisations may fulfil a useful economic regeneration function but are not democratically accountable and should not be given influence in establishing the grounds for local public participation.
The end of comprehensive planning

The Green Paper could end coherent land use planning and damage the system’s ability to deliver sustainable development. Under the proposals local authorities are only obliged to draw up Local Development Frameworks (LDFs). These documents are not map-based and contain only brief, generalised policies. This puts planning back into the 1980s when Local Authorities were not compelled to plan comprehensively for the whole of their area. The result was no strategic overview. The lack of comprehensive plan coverage across an entire Local Authority area will create uncertainty and confusion as to what may or may not be acceptable on a particular site. This is damaging both to business and to the legitimacy of planning in the eyes of the public.

Administrative chaos

LDFs will require three yearly replacement, annual reviews and continual updating. The administrative burden will be huge and make effective public consultation impracticable.

Government claims to have reduced the number of tiers of planning policy. In fact local authorities and the public may be faced with not just a new LDF with its own process, but a whole series of other action plans all requiring separate adoption processes. The result would simply be chaos and confusion.

What Friends of the Earth is proposing

Land-use planning remains one of the most effective, sophisticated and radical instruments for environmental regulation yet conceived in the United Kingdom. The future of the system and its relationship with the public is of central importance not just in terms of the narrow procedural aspects of planning, but in how we control and regulate the market for land, how we organise local democracy and how we achieve sustainable environmental change.

Friends of the Earth is campaigning for a planning system that is accountable, transparent, participatory and delivers sustainable development. A detailed briefing on our position is available by writing to Friends of the Earth at 74 Kirkgate, Leeds, LS2 7DJ or calling 0113 389 9962.

Conclusion

While the Government claims to want a faster, fair planning system for all, these proposals will deliver precisely the opposite. The Government’s proposals will remove people’s rights at a national and local level, reduce democratic accountability and lead to administrative chaos slowing the planning system down. The Government must think again and produce proposals that have the potential to deliver progressive social policy agendas of inclusion, community empowerment and democratic renewal at the national, regional and local levels.

Endnotes and (references)

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(3) Planning: delivering a fundamental change, paragraph 4.26 (DTLR 2001)

(4) Planning: delivering a fundamental change, paragraph 4.27 (DTLR 2001)

(5) New Parliamentary procedures for processing major infrastructure projects, paragraph 21 (DTLR 2001)

(6) Speaking on the launch of the consultation on major projects on December 17th 2001 Lord Falconer said “But communities will also benefit by the enhanced consultation rights I have announced today”.

(7) Paragraph 64 of Lord Falconer's uncorrected evidence to the select committee on 18th December 2001

(8) The detailed case for third party rights is laid out in the Report “Third party rights of appeal in planning” Jointly sponsored by Friends of the Earth and a range of other community and environmental sector organisations

(9) Planning: delivering a fundamental change, paragraph 5.57 (DTLR 2001)

(10) Planning: delivering a fundamental change, paragraph 4.21 (DTLR 2001)