

Major Public projects: no say for parish and town councils?

This month, planning consultant Wendy Le Las looks at the implications of the new Planning White Paper

Major public projects can be likened to elephants: easy to recognise but difficult to describe. Infrastructure associated with transport, energy, water and waste disposal are obvious candidates.

The Planning White Paper is said to emanate from a Treasury ‘hell-bent’ on development in the face of international competition. The fear is that people would be excluded from debates over major schemes – apart from deciding the colour of the front gates. Is this true? Yes and no, as you will see.

Forthcoming changes

The 1980’s habit of equating policy with market forces has gone but in many fields nothing has taken its place. Weeks have been spent at major inquiries, e.g. Heathrow Terminal 5, divining what constitutes ‘government policy’.

The basic idea of the White Paper is to substitute participation at a major public inquiry with debate over national policy. Public consultation on policy would be important: the Cabinet Office Code of Practice on consultation would be the model. Special efforts would be made to involve the relevant communities where policies are site-specific.

So if your council has strong feelings about a certain policy area, or knows that it could be blessed with, say, its very own international airport, speak or forever hold your peace. Parliament would debate and ratify a given policy as it would not be involved in decisions on actual applications. New evidence that could challenge national policy statements would be dealt with merely by correspondence with the secretary of state.

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Applications

A commission, made up of experts, would be responsible for dealing with actual applications. It would vet the preparation of applications: inquiry time has been wasted by poor preparation in the past. An important part of this would be the developer working with the relevant community from the earliest possible stage, rather than the usual last minute public relations exercise.

Consultations

To commence the actual decision making, the commission would notify all the affected parties, including local councils; there would be a preliminary gathering of outline statements with the objective of identifying the key issues.

Attempts would be made to mediate between the parties in order to reduce the number of issues. The controversial part of the proposals is the processing of the actual application by the commission: it would be a large-scale version of the written representations process used to deal with the least complex appeals.

The commission would invite detailed submissions of evidence, on the local impacts of the scheme only, from all the parties and allowance is made for a further stage of written counter evidence.

Local authorities would provide their views on how the project relates to the development plan. Commission members would be able to call witnesses and question them. At the end the commission would organise an 'open floor' stage where interested parties could have their say about the application.



Communities need to have a say on how major developments, such as new airport terminals, will affect them

Potential Bias

National policy statements are to be 'the primary consideration' when determining applications, rather than the balancing act between, say, the development plan and other factors.

The only reason the commission could refuse an application, conforming to national policy, would be if it was contrary to EU or domestic law. All this is supposed to take no longer than nine months.

Flaws

Opponents point out the following:

- The existence of a national policy statement does not guarantee that it would be considered to be up to date, or that objectors would agree that it was correctly formulated in every respect.
- There is nothing to prevent people objecting on the grounds of need, design, location and timing. The law demands that in certain circumstances matters be properly considered even if national policy is clear. Limiting the examination to local impacts and benefits is contrary to the Aarhus Convention ratified by the UK in 2005.

- By definition, the cases would be both intricate and complex. It is unlikely that the members of the commission would have the in-house expertise to consider the entire environmental statement and critiques of it submitted by objectors, particularly in the absence of cross examination of expert witnesses by opposing parties.
- The White Paper overlooks the fact that issues evolve and change during the course of an inquiry, as factors which were not evident at the start of proceedings come to the fore. All this would be lost in the proposed procedure which would either be efficient in its examination of the facts, in the interest of speed or take far longer than anticipated.
- The next result could be that objectors repair the High Court pleading their right to a fair hearing under the 1998 Human Rights Act. Should the High Court quash the commission's decision, then all the benefits of a speedy decision would be lost.

Conclusion

So fear not, the outcry from the legal profession should ensure that your rights extend beyond the paint catalogue.