PLANNING

Planning Green Paper II

May 2002

Dr. Wendy Le-Las, Planning Consultant, gives gives the second part of her viewpoint on the Government's Planning Green Paper.

The last article was devoted to a canter through the main provisions of the Planning Green Paper (PGP). This one deals with important topics for which there was no space last time.

Statutory consultees

The issue, which has evoked both the greatest confusion and the most indignation amongst local councils, is that of their status as statutory consultees. For those of you who are uncertain, the doyens of planning law, Professor Malcolm Grant of Cambridge and Professor Michael Purdue of the City University in London, confirm that local councils are indeed statutory consultees. The problem is that in the good cause of speeding the system, the PGP proposes to limit statutory status to Government Agencies concerned with health and safety, English Nature and English Heritage. It would appear that local councils are to lose their right to see and comment on applications in their patch. Howls of protest have been heard from local councils up and down the land, not least because their area will be most intimately affected and, if they fail to comment within the time, the Local Planning Authorities (LPA) does not delay its decision. NALC, I understand, will certainly be protesting in the strongest possible terms.

Outline/Reserved matters

Big schemes are often dealt with the means of a two stage procedure: an outline application that establishes the principle of the development, followed by one or more applications filling in the details as prescribed under reserved matters. This can cause problems because:

Circumstances change from the time the outline permission was granted, perhaps many years ago. Heybridge Parish Council is vigorously opposing successive stages of a huge housing development on the floodplain: the displaced water is flooding out the older properties in Heybridge. In the early nineties, when outline permission was given, "it was never going to rain again"…

The proposals coming forward under reserved matters do not correspond to the outline application. Detailed proposals coming forward for the redevelopment of Greenham Common Airbase do not correspond to that proposed in the 1997 outline permission: increasing the proportion of B8 Uses will exacerbate traffic congestion in nearby villages. A consortium of parish council in northern Hampshire is currently challenging West Berkshire Council. The PGP proposed that, instead of outline consent, the developer seeks a certificate from the LPA to produce a detailed scheme, against agreed parameters, within a given period of time. The certificate may cover, for example, design, affordable housing provision and community participation. The result would be a full application that would be judged, amongst other things, against parameters in the original certificate.

Major infrastructure projects

With regard to major projects, the basic problem is that there is no policy where a whole range of topics e.g. air travel, nuclear power, deep water ports etc. A cursory debate in Parliament is not likely to satisfy the British electorate. What is needed is some way of tapping into public opinion. A possible model is that is which is underway for radioactive waste. Reference is made to "national policy statements, which would themselves normally have been subject to consultation".
One wonders how often the need for consultation would be bypassed.

Greenwich Millennium Village which highlights the concerns regarding brownfield sites.

Proper consultation over policy would be time consuming. However it could obviate the need for extensive Parliamentary hearings over a given project because on the of the root causes of long inquiries is the demand for the public to have their say over the policy which led to the proposal.
Another great cause of delay is the inadequacy of the applicant's Environmental Statement and the business case. If Parliament could require the proper production and audit of all the relevant documentation prior to the lodging of the planning application, this would save much delay. Whilst the Government is truing to stop the abuses of the two-stage process in outline applications, followed by reserve matters (see above) it is to invent one for major projects. All the likely candidates would automatically be subject to the Environmental Investigation Agency (EIA). If the public inquiry is to be just a formality, the government could find itself in the European Court for failing to properly scrutinise all the environmental effects as required by the European Directive on EAI and overriding the rights of individuals, as enshrined in the Human Rights Act.
Superficially streaming the procedure the procedure for major infrastructure projects is an attractive idea. However, the unease of local councils over the proposals borne out by the discussion between Lord Falconer and the STLR Select Committee over the proposals for major projects. It is clear that MPs would be very limited. Furthermore, if Parliament did undertake proper scrutiny of the proposals, then there is no guarantee that it would take less than time than a public inquiry.

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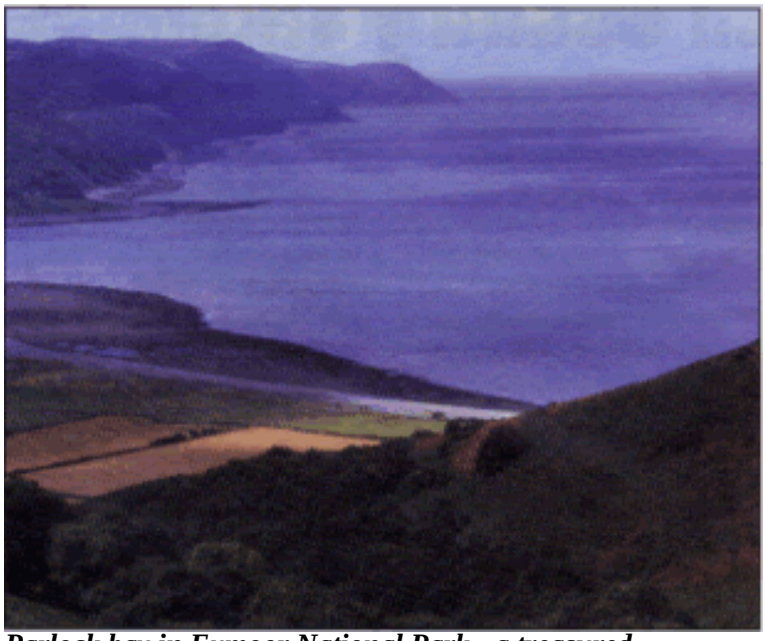
Business planning zones

Business Planning Zones (BPZs) would appear to be a re-incarnation of the Simplified Planning Zones in the 1980s. BPZs are conditional on not putting a strain on infrastructure, housing provision or the environment. However it is precisely in areas such as Cambridge and the M4 corridor that high-tech industry wants to expand. Desirable it may be to encourage growth elsewhere, but history has shown that when recession bites it plants in less favoured areas that are the first to be closed down. The B1 Use Class makes up a small percentage of industry. Business parks have been set up on attractive Greenfield sites up and down the land but have failed to attract B1 firms. Desperate for employment the LPA then downgrades the site to B2 and B8: this can be a waste of beautiful greenfield site and distribution can put considerable strain on the road system for miles around with a consequent reduction of amenity for local communities. Given the past history of Simple Planning Zones (SPZs), local councils are anxious about the policing of the "tight defined parameters" if no consent necessary.



Parlock bay in Exmoor National Park - a treasured landscape, a special place

Planning Obligations

The government is proposing that, instead of each LPA negotiating individual s.106 agreements with developers, a set of standard tariffs be set out in the Local Development Framework. Basically the tariff system will be a tax on development. It is arguable that affordable housing is so important that it is ought to be paid for out of direct taxation. However, if one accepts that a development tax is the right way to fund public infrastructure, it is right that it should affect all developers, and the provision of affordable housing not fall disproportionately on house builders. Being able to pool resources will enable real improvements to be made rather than the tokenism which goes on now e.g. the portacabin in the school playground but no money for teachers, books, computers, playing fields etc. On the other hand in areas without the development pressure, there will still be no revenue from this source, and the crumbling infrastructure will remain. Even in areas of continuing growth there are deficiencies legacies from the past and which cannot be required to be met by current developers under the terms of Circular 1/97.

Third Party Rights of Appeal

The PGP's attitude towards third party rights of appeal is very disappointing. The constraints suggested by the recent report on the subject are eminently sensible, namely that the right of appeal be limited to:

- People directly affected by the development;
- Nearby LPAs;
- Interest groups/concerned persons;
- Statutory agencies;
- Government departments.

The type of cases would be restricted to when the application is:

- Contrary to an adopted development plan;
- On in which the LPA has an interest;
- Subject to EIA
- Recommended by the LPA case officer
- Significant in terms of size, scale of sensitivity of the site

"Heybridge Parish Council is vigorously opposing successive stages of a huge housing development on the floodplain: the displaced water is flooding out older properties in Heybridge...."

The need for these rights is undeniable. The government seems to be under the illusion that LPAs adhere to the policies laid down in the Planning Policy Guidances (PPGs): as all local councils know, LPAs have discretion, which they use - and abuse! This situation is compounded by the restructuring of local government committees and procedures: a caucus of members can drive something through regardless if the views of rank and file members. Thus there is a great need for third party rights of appeal to secure the objectives of national policy, but the Government is deaf to the pleadings of anyone thought to be in opposition to business interests.

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