



Campaign to Protect
Rural England

Planning for a Sustainable Future A CPRE briefing on the Planning White Paper

1. Despite recent reform of the planning system following the Planning and Compulsory Purchase Act 2004, a new Planning White Paper *Planning for a Sustainable Future* published on 21 May proposes further sweeping changes to the planning system. The primary concern of the Government appears to be that there is a bias within the current planning system towards sustainability and environmental protection with insufficient weight being given to economic development. A theme throughout the White Paper is the attempt to give narrow economic considerations prominence in a way which we fear will undermine sustainability and environmental protection.

2. The Planning White Paper is divided into two major sections. The first half concerns planning for Major Infrastructure Projects. The second half deals with streamlining the planning system.

Major Infrastructure Projects

3. There is a general belief that planning for major infrastructure projects takes too long. In the Government's view this is because current planning procedures are too complex. Currently, as explained in the White Paper:

- Government policy, or the balance of different Government policies, is sometimes unclear.
- Promoters do not always prepare their applications as well as they could. They also do not always engage early or widely enough with key parties such as statutory environmental and heritage bodies, the Highways Agency and non-governmental organisations (NGOs). Though it is claimed that in some instances this may be because those bodies are slow to respond to requests for engagement.
- There are too many different and overlapping development consent regimes. A single project can require multiple permissions under several different regimes, particularly projects involving linked developments.
- The current inquiry processes for examining applications can be slow and inefficient at times.
- The decision making process is complex. There are two separate stages: the Inspector's recommendations to the minister, and the ministerial decision. For major infrastructure projects with linked development, there can also be multiple decision makers – because of the different legislation and the different ministerial accountabilities, often more than one minister will be involved in making the final decision on a specific project.
- The role of ministers in planning decisions on major infrastructure is also not well understood. Ministers perform a quasi-judicial role when deciding planning applications, basing decisions on the evidence presented and published policy and take great care to avoid any real or perceived conflict of interest.

4. The new proposal in the White Paper for planning Major Infrastructure Projects is to:

- Produce national policy statements (NPS) for key sectors to ensure that there is a clear policy framework for decisions on nationally significant infrastructure.

- Help promoters of infrastructure projects to improve the way that they prepare applications by making better advice available to them, requiring them to consult the public and local communities effectively and requiring earlier engagement with key parties such as statutory environmental and heritage bodies, and the Highways Agency.
- Clarify the decision making process and achieve a clear separation of policy and decision making by creating an independent infrastructure planning commission (IPC) to take the decisions on nationally significant infrastructure cases.
- Streamline the procedures for infrastructure projects of national significance by rationalising the different development consent regimes and improving the inquiry procedures for all of them.
- Improve public participation across the entire process by providing better opportunities for public engagement at each stage of the development consent process.
- Explore devolving decisions on smaller infrastructure projects, where appropriate, to local authorities.

National Policy Statements

5. A key problem with the current system of planning for major infrastructure is that national policy and, in particular, the national need for infrastructure, is not clearly set out. National policy statements would:

- Set out the Government's objectives for the development of nationally significant infrastructure in a particular sector and how this could be achieved in a way which integrated economic, environmental and social objectives to deliver sustainable development.
- Indicate how the Government's objectives for development in a particular infrastructure sector had been integrated with other Government policies.
- Show how actual and projected capacity and demand are to be taken into account in setting the overall policy for infrastructure development.
- Consider relevant issues in relation to safety or technology.
- Indicate any circumstances where it was particularly important to address adverse impacts of development, for example to mitigate detrimental impacts such as the effect of additional noise, poorer air quality or loss of amenity space on communities. Threats to the integrity of the historic environment might be especially important in certain circumstances.
- Be as locationally specific as appropriate, in order to provide a clear framework for investment and planning decisions.
- Include any other particular policies or circumstances that ministers consider should be taken into account.

6. National policy statements on infrastructure would play a key role in the proposed system for development consent for nationally significant infrastructure projects. They would:

- Establish what infrastructure was needed to meet long term challenges in a way that integrated government objectives and delivered sustainable development.
- Provide a more certain and stable base for investment in infrastructure.
- Provide a clear and focused opportunity for consultation and debate on national infrastructure development.
- Enhance ministerial accountability for policy setting.
- Be the primary consideration for the infrastructure planning commission in reaching decisions.
- Provide a platform for more efficient inquiries and decisions.

Initial comment

7. CPRE does not oppose the principle of National Policy Statements (NPSs), but we believe the Government has to be clear about the process by which these statements are prepared. We would be looking for thorough and transparent public consultation, the highest level of parliamentary scrutiny, possibly via an improved select committee style procedure, and a planning commission with a role of informing ministers on planning matters. We also have concerns about the appropriate content of NPSs, which we believe should generally not be locationally specific, and their relationship with other statements of national policy, such as those concerning protected areas.

8. As part of the White Paper's proposals for National Policy Statements there is in effect a strong presumption in favour of development and not enough weight given to reducing the need for major infrastructure, for example by reducing need to travel, move goods or reduce consumption. We would like to see strong sustainability considerations built into all NPSs.

9. The legitimacy of the proposed new system rests on getting NPSs right. However, there is a likelihood that NPSs produced by different departments will contain wide variations in the content, style and outcomes. We are concerned that wholly inadequate policy statements like the Aviation White Paper could be fast tracked into becoming an NPS.

10. Currently the proposal is that a new IPC would approve any application for development consent for a nationally significant infrastructure project which had main aims consistent with the relevant national policy statement, 'unless adverse local consequences outweighed the benefits, including national benefits identified in the national policy statement. Adverse local consequences, for these purposes, would be those incompatible with relevant EC and domestic law, including human rights legislation' (Chapter 4, first box, pg 42). Relevant domestic law for infrastructure sectors would be identified in the planning reform legislation. We believe this would unreasonably constrain the IPC's deliberations. At the very least, CPRE would like the IPC to be able to have regard to new evidence and considerations beyond those incompatible with relevant EC and domestic law which might challenge assumptions made in NPSs. We are seeking legal advice on this aspect of the White Paper.

11. There are significant difficulties in making sure there is full and proper community engagement in the development of NPSs. It is doubtful whether the general public will become engaged in this level of consultation, especially when actual projects affecting them are likely to start to appear years later. It isn't clear how the 'national dialogue' ministers are proposing will actually take place and effectively shape NPSs.

12. There is insufficient parliamentary scrutiny proposed for NPSs. There are only two paragraphs in the PWP covering parliamentary scrutiny of NPS (paras. 3.27 & 3.28). These state that there is a need for scrutiny but doesn't suggest a specific mechanism to achieve this. The consultation document on the White Paper is calling for suggestions on how Parliament can be involved.

13. Strategic Environmental Assessment (SEA) of NPSs will only be carried out 'where appropriate' although the PWP provides no definition of what this may mean. We believe all NPSs should be subject to an independent SEA with the Government required to show how they have taken it into account. We believe that with a robust response to this issue we could achieve a more effective approach towards SEAs.

Preparing applications for nationally significant infrastructure projects

14. Preparation of proposals for MIPs will be carried out by the promoter of the project. This phase would typically involve promoters:

- Identifying a project that might deliver the infrastructure requirement identified in the national policy statement
- Identifying potential options to deliver the project, seeking advice and input from affected local authorities and local communities.
- Gathering information on the potential impacts of the project, particularly where the Environmental Impact Assessment Regulations require preparation of an Environmental Statement.
- Identifying a preferred project option, after consideration of options and engagement with the local community.
- Consulting on the preferred project option.
- Confirming that the proposed scheme falls within the remit of the infrastructure planning commission to determine.
- Preparing an application for development consent for the project.

15. Thorough preparation and early engagement with key parties including affected local communities, local authorities, and relevant public bodies such as statutory environmental and heritage bodies, as well as with the determining body, are essential if the project development process is to be effective and the planning system is to be able to deliver decisions efficiently.

16. The IPC would issue written guidance on the application process, procedural requirements and consultation.

Initial comment

17. We question how independent and effective the community consultation will be, given that the scheme promoter has a vested interest in the project going ahead. This is the point where it might be asked, ‘your nuclear power station goes here: what colour would you like the gates?’

Determining applications for nationally significant infrastructure projects

18. An IPC will take decisions on individual applications for infrastructure schemes of national significance in England.

19. It will determine applications for development consent for transport, energy, water, wastewater and waste infrastructure projects above statutory thresholds within the framework of relevant national policy statements;

20. The IPC will determine applications for projects which were specifically identified as being of national significance in the national policy statements or which ministers directed were to be treated as such.

21. The Government will also:

- Harmonise as far as possible, the different development consent regimes to create a single application process for these projects and give the IPC powers to grant the authorisations necessary to construct the project, including the power to authorise the compulsory purchase of land.
- The Government will appoint a board of the IPC, in most cases, to appoint a panel of members to consider each major infrastructure project application. However, where it did not consider that this was necessary, such as for more minor or less complex projects, it would have discretion to delegate the examination of the application to a single commissioner with the commission's secretariat.
- The IPC would gather and probe the majority of evidence in writing, and to use direct questioning rather than cross-examination by opposing counsel as the basis for oral examination. The IPC would work to a statutory time limit of nine months for its examination and decision.
- Consultation would include an open floor stage in the examination to allow interested parties to express their views about an application, within a defined period of time.
- The commission, in granting permission, to specify any conditions that the promoter would have to comply with – these would usually be enforced by local authorities.
- There would be a clear and defined opportunity for legal challenge to a decision of the commission.

Initial comment

22. CPRE is not opposed to the establishment of an IPC per se but we would prefer if it was a more investigative body informing ministerial decisions rather than a decision making body. CPRE firmly believes that ministers should make the final decisions on MIPs to ensure public accountability and transparency of decisions.

23. The NPSs will have pre-judged a number of criteria such as whether an SEA is required and whether the project is actually needed or not. This decision will possibly have been made some years earlier and may not be relevant to the particular proposal. The PWP proposals provide some scope to question the current relevance of a proposal and refer the challenge to the Secretary of State but no requirement for the IPC to take new evidence into consideration.

24. The IPC will examine whether all the correct procedures have been gone through for the development to be allowed. There is a danger they will be a rubber stamping body. There is serious concern as to whether the IPC will have adequate powers to reject a project.

25. The membership of the IPC is critical. We have doubts as to whether it will have sufficient environmental and community engagement expertise. This is especially important in projects which are deemed of lesser importance and which will be allocated to a single member of the IPC to examine before taking his decision to the board of the IPC.

26. The opportunity for the public to be involved in the IPC inquiry is minimal. Affected parties will in most cases only be able to submit written evidence on any proposal. At the end of the decision making process the IC may organise an "open floor" stage where interested parties could have their say about the application. It is doubtful this will have any significant impact on the outcome of the inquiry.

27. In general, we welcome harmonisation of consent regimes into a single planning regime. At present there are a number of special regimes for considering whether to grant development consent for projects such as power stations and electricity lines, some gas supply infrastructure, pipelines, ports where development extends beyond the shoreline, roads, and railways. These include the Transport and Works Act 1992, the Highways Act 1980, the Harbours Act 1964, the Gas Act 1965, the Electricity Act 1989, and the Pipelines Act 1962. Airports are dealt with under the Town and Country Planning Act 1990.

28. According to the White Paper, rationalising the different consent regimes for nationally significant infrastructure projects should deliver improvements in the speed, transparency and predictability of decisions. It would allow harmonisation of the requirements on developers; create a single application process for nationally significant infrastructure projects; and harmonise the procedural rules which then govern the examination and determination of applications. It would also bring together the range of authorisations needed to implement nationally significant infrastructure projects, so that the commission could consider projects holistically and give the necessary authorisations required to proceed. This would simplify the process for promoters, participants and the proposed IPC.

Improving the town and country planning system

29. The aims of the second half of the PWP is to build on recent reforms and further improve the system, rather than fundamentally re-engineer it.

30. However, the White Paper agrees with Kate Barker that even while previous reforms are bedding down, further change is needed:

- to make planning more responsive to future challenges, such as globalisation and climate change;
- to strengthen the place shaping role of local authorities; and
- to address problems in the way the system currently operates.

31. It is proposed that Communities and Local Government (CLG) will produce a more strategic, clearer and more focussed national planning policy framework with PPS1 – Delivering Sustainable Development at its heart, to provide the context of plan making and decision making.

A positive framework for delivering sustainable development

31. This chapter describes how the town and country planning system will be reformed to: Help address climate change by:

- Finalising the Planning Policy Statement on climate change and introducing legislation to set out clearly the role of local planning authorities in tackling energy efficiency and climate change.
- Permitting a range of types of householder microgeneration without the need to apply for planning permission, subject to certain limitations and conditions to control impact on others.
- Reviewing and where possible extending permitted development rights on microgeneration to other types of land use including commercial and agricultural development.
- Working with industry to set in place a timetable and action plan to deliver substantial reductions in carbon emission from new commercial buildings within the next 10 years.

32. The PWP sets out the need to plan for a sustainable supply of land for development by:
- Continuing to prioritise the use of previously developed land while recognising the importance of our parks and green spaces in urban areas.
 - Implementing measures announced in the 2007 Budget.
 - Promoting a debate as part of developing a long term vision for land use and land management (a public debate which was started by CPRE when it hosted David Miliband at its 80th anniversary event).
33. The PWP emphasises the need to plan positively for sustainable economic development by publishing a revised planning policy statement Planning for Economic Development which will further reinforce the Government's commitment set out in PPS1 to promoting a strong, stable and productive economy.
34. And it proposes to improve the effectiveness of the town centre planning policy by replacing the need and impact tests with a new test which has 'a strong focus on our town centre first policy, and which promotes competition and improves consumer choice, avoiding the unintended effects of the current need test' (Chapter 7, first box, page 103).
35. The Government believes that the 'need test' has proved in some respects a blunt instrument, and can have the unintended effect of restricting competition and limiting consumer choice. For example, it is possible under current policy for a new retail development on the edge of the town centre to be refused because there is an existing or proposed out-of-town development which meets the identified 'need' even though the new retail development would bring wider benefits and help support the town centre.
36. They therefore intend to review the current approach in PPS6 to assessing the impact of proposals outside town centres. They will replace the need and impact tests with a new test (which is to be consulted on) which has a strong focus on our town centre first policy, and which promotes competition and improves consumer choice avoiding the unintended effects of the current need test.

Initial comment

37. CPRE welcomes the focus on planning to help address climate change. We are concerned however, that short term economic considerations will come ahead of changes needed to mitigate against climate change.
38. There is an overall bias in favour of development throughout the White Paper. This is highlighted by the prominence given to the production of a new planning policy statement for planning for economic development (PPS4). As the Government has stated before (Paul Hudson, National Planning Forum, 20th March 2007) it is keen to rebalance the planning system in favour of economic development and the theme throughout the White Paper is on changing the system to make it quicker and easier to get planning decisions made. This is contrary to the principles of sustainable development, which seeks to integrate objectives and recognise we live within environmental limits.

39. The needs test has been successful in promoting the viability and vitality of town centres. We believe that removal of the needs test would undermine town centres and urban regeneration. CPRE would like to see the needs test retained and strengthened. While there may be a small number of cases which have resulted in sub-optimal outcomes in environmental terms, we believe these could be accommodated within the current framework of PPS6.

40. The White Paper offers reassurances that Green Belt policy will be unaffected. However, we are concerned that the White Paper does not recognise the role of Green Belt policy nor the importance of a high-quality natural environment for business, for people, or in its own right. It also places an unhelpful emphasis on the quality of Green Belt land. By prioritising economic development, landscape and wildlife on the urban fringe and in the wider countryside are threatened. Planning needs to protect sites and join up fragmented landscapes to allow wildlife to adapt to climate change and to bring nature close to where people live.

Strengthening the role of local authorities in place shaping

41. This chapter describes the Government's proposals for:

- Placing planning at the heart of local government by aligning the Sustainable Community Strategy and the local development framework core strategy. They will continue promoting culture change in planning, and issue 'place shaping' guidance.
- Promoting a joined up community engagement approach across a local authority's remit and remove the requirement for the independent examination of the separate planning Statements of Community Involvement.
- Introducing changes to local development frameworks to ensure a more streamlined and tailored process with more flexibility about the number and type of plans, how they are produced and a more meaningful, engaged level of community involvement.
- Building on current improvements to planning performance by focusing delivery and incentives through Local Area Agreements with a particular focus on delivering local development frameworks.
- Introducing Planning Performance Agreements, which will help streamline the processing of major applications.
- Supporting a properly resourced planning service with changes to planning fees and consult on devolving the setting of fees to local authorities.
- Expanding the use and take-up of e-planning arrangements.

Initial comment

42. Engaging local communities in the planning process is vital. It is especially important in the early stages of plan preparation for producing effective plans which enjoy local support and to ensure that all options are fully appraised. The PWP (para 8.11 onwards) intends to reduce public consultation during the early stages of the LDF development plan process. Whilst some may consider this issues and options stage to be superfluous, it should be borne in mind that consultation at the Issues and Options stage does not have to include the general public, and that authorities may consult selected stakeholders only at this stage, as defined in their Statements of Community Involvement (SCI).

43. The White Paper proposes abolishing the Preferred Options stage of preparing a Local Development Framework. Prior to submitting a draft for examination, there would be a 'plan preparation stage' to consider issues and options. If the issues and options stage is abolished without any widening of consultation requirements for this initial stage of consultation, there is a risk that ordinary members of the public (and any organisations not favoured as selected 'stakeholders') will only find out about the content of the proposed Development Plan Document when the final 'Submission' document is published. This is far too late and does nothing for 'front-loading'. It is no good relying on opportunities to respond to the draft SCI, since the ordinary member of the public is likely to miss this subtle point.

44. It is important that the plan preparation stage contains genuine options, and therefore the LPA should not indicate its preferred options at this stage, or at least show it is open to the possibility that others might come up with better alternatives, otherwise it could be accused of making up its mind before it had conducted consultation on the options. If the Preferred Options stage is dispensed with it is vital that the plan preparation stage is open to all (as it already is in some Authorities).

Making the planning system more efficient and effective

45. Most of this chapter deals with simplifying the planning system. It includes:

- Introduce a new impact approach to householder development which will reduce the number of minor applications for planning authorities whilst protecting the interests of neighbours, the wider community and the environment.
- Extend the impact approach to permitted development to other types of development such as industrial or commercial buildings as appropriate, subject to limitations and conditions.
- Undertake a review and simplification of the Town and Country Planning (General Development Procedure) Order 1995 which is the main legislation setting out the process for submitting and considering planning applications.
- Allow minor amendments to be made to a planning permission without the need for a full planning application.
- Legislate to introduce a single set of rules governing all tree preservation orders.
- Streamline information requirements for all applications, through the introduction of a standard application form and associated guidance and subsequently a further review of information requirements.
- Introduce a package of measures designed to reduce the number of applications determined by ministers; and
- Introduce a range of measures to improve the speed and efficiency of the appeals process.

These include:

- Implementing fast tracked processes for householder and tree preservation order appeals.
- Establishing Local Member Review Bodies to determine minor appeals at the local level.
- Enabling the Planning Inspectorate, acting on behalf of the Secretary of State, to determine the appeal method by applying ministerially approved and published indicative criteria.
- Improving customer focus and efficiency through a package of measures to refine the rules and regulations and increase the quality of appeals.
- Updating the provisions for awards of costs.
- Reducing the time limit for planning appeals when the same development is the subject of an enforcement notice.
- Measures to place enforcement appeals and lawful development certificate appeals on the same footing as that for planning appeals.
- Introducing an appeal fee.

Initial comment

46. Whilst there are a number of proposals in this chapter, there is very little that is being consulted on at this point. Some of this consultation – reducing the need for planning permission for minor development - is being carried out by an additional consultation also due to close on 17 August, whilst other proposals will be consulted on later in the year.

47. The Barker Review proposed the development of a voluntary system, for smaller developments, whereby if there was agreement between a developer and neighbours affected, a full planning application would not be required. It was argued that this could make the process easier for householders in situations where those affected by the development are content for it to proceed, and so avoid small applications unnecessarily placing a burden on local planning authorities. The PWP states that the Government has a number of concerns about how this might work in practice, but would welcome views.

48. CPRE is strongly opposed to the Barker proposal as it is far too open to opportunities for neighbours to attempt bribing each other to carry out development. This has the potential to unfairly advantage wealthy homeowners who can afford to pay of their neighbours to get their development through. It also fails to recognise the wider and long term public interest in ensuring development does not damage the environment.

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We welcome opinions from CPRE members on this briefing paper. For more information or to send comments of this paper, please contact Marina Pacheco, Head of Planning Policy, on 020 7981 2827 (MarinaP@cpre.org.uk)