

## Response to Consultation on Planning White Paper 2007

### Section 1: Consultation questions

Proposed reforms to the development consent regime for nationally significant infrastructure  
Projects Improving the way key infrastructure projects are dealt with

#### Q.1 The proposed package of reforms

We propose to replace the multiple existing consent regimes for key national infrastructure with a new system that will enable us to take decisions on infrastructure in way that is timely, efficient and predictable, and which will improve the accountability of the system, the transparency of decisions, and the ability of the public and communities to participate effectively in them.

In particular, we propose to:

- I produce, following thorough and effective public consultation and Parliamentary scrutiny, national policy statements to ensure that there is a clear policy framework for nationally significant infrastructure which integrates environmental, economic and social objectives to deliver sustainable development;
- provide greater certainty for promoters of infrastructure projects and help them to improve the way that they prepare applications by making better advice available to them; by requiring them to consult publicly on proposals for development; and by requiring early and effective engagement with key parties such as local authorities, statutory bodies, and relevant highway authorities;
- streamline the procedures for infrastructure projects of national significance by rationalising the different consent regimes and improving the inquiry procedures for all of them;
- clarify the decision making process, and achieve a clear separation of policy and decision making, by creating an independent commission to take the decisions on nationally significant infrastructure cases within the framework of the relevant national policy statement;
- improve public participation across the entire process by providing better opportunities for public consultation and engagement at each stage of the development consent process; improving the ability of the public to participate in inquiries by introducing a specific "open floor" stage; and, alongside the introduction of the new regime, providing additional funding to bodies such as Planning Aid.

*Do you agree that there is a strong case for reforming the current system for planning for nationally significant infrastructure?*

*Do you agree, in principle, that the overall package of reforms proposed here achieve the objectives that we have set out?*

*If not, what changes to the proposed reforms or alternative reforms would you propose to better achieve these objectives?*

1. No. We do not see the case for reform as strong.  
In our part of the country the Channel Tunnel Rail Link has been delivered, under the present arrangements, in a reasonably satisfactory way and to a reasonably timescale, bearing in mind the complexity of the project. If other major schemes have proved less satisfactory, then the lessons should be learned from projects such as the CTRL ([please see attached press article](#)), rather than making the radical changes proposed.  
The removal of democratic accountability would be wrong in principle.

# National Policy Statements

## Q.2 Introduction of national policy statements

We propose that government would, where it deems appropriate and subject to public consultation and Parliamentary scrutiny, produce national policy statements for key infrastructure sectors to clarify government policy, provide a clearer strategic framework for sustainable development, and remove a source of delay from inquiries.

*Do you agree, in principle, with the introduction of national policy statements for key infrastructure sectors in order to help clarify government policy, provide a clearer strategic framework for sustainable development, and remove a source of delay from inquiries?*

*If not, do you have any alternative suggestions for helping to achieve these objectives?*

2. We do not have a problem with the principle of any government having a clear idea of its policy, and starting it accordingly.

## Q.3 Content of national policy statements

The content of national policy statements should include certain core elements.

They 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. Strategic Environmental Assessment (SEA) is a procedure for assessing the effects of certain plans and programmes on the environment and will be an important tool in some cases for ensuring the impacts of development on the environment are fully understood and taken into account in national policy statements. National policy statements would be subject to an appraisal of their sustainability to ensure that the potential impacts of the policies they contain have been properly considered. Wherever appropriate we would expect this to be in the form of an SEA;
- indicate how the Government's objectives for development in a particular infrastructure sector had been integrated with other specific government policies, including other national policy statements, national planning policy, and any relevant domestic and international policy commitments;
- show how actual and projected capacity and demand are to be taken into account in setting the overall policy for infrastructure development. This would not necessarily take the same form in all national policy statements as the drivers of need for infrastructure vary and may be more complex and uncertain for some sectors than for others.
- consider relevant issues in relation to safety or technology, and how these were to be taken into account in infrastructure development; I indicate any circumstances where it was particularly important to address adverse impacts of development;
- be as locationally specific as appropriate, in order to provide a clear framework for investment and planning decisions. Some national policy statements might, according to circumstances, be locationally specific, while for others where it would not be appropriate, or sensible, for the Government to direct where investment should take place, they might specify certain factors affecting location; and
- include any other particular policies or circumstances that ministers consider should be taken into account in decisions on infrastructure development.

*Do you agree that national policy statement should cover the core issues set out above?  
Are there any other criteria that should be included?*

3. Further criterion is needed to consider possible implications for communities that may be involved. (This would bring it in to line with question 5)

#### Q.4 Status of national policy statements

We propose that national policy statements would be the primary consideration for the infrastructure planning commission in determining applications for development consent for nationally significant infrastructure projects. The commission 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. Relevant domestic law for infrastructure sectors would be identified in the planning reform legislation.

*Do you agree, in principle, that national policy statements should be the primary consideration for the infrastructure planning commission in determining individual applications?*

*If not, what alternative status would you propose?*

4. No. We do not agree with the principle of an infrastructure planning commission determining applications (Please see comment in answer 1 concerning the removal of democratic accountability)

#### Q.5 Consultation on national policy statements

We propose that there should be thorough and effective public consultation on national policy statements. The precise means of consultation would depend on the proposed content of national policy statements. However to ensure consultation is to a high standard, certain principles would need to apply:

- before publishing national policy statements in draft, there should be thorough consideration of evidence, which may include informally consulting relevant experts or organisations;
- once published in draft, there should be thorough and effective public consultation, in line with best practice, on the Government's proposals for national infrastructure needs and policy;
- local, regional and national bodies and statutory agencies with a particular interest should be consulted;
- where proposals might have a particular bearing on local communities, there would need to be effective engagement to ensure that such communities understood the effect of and could express views on the government's proposals, in line with best practice on community involvement with planning;
- the Government would need to take the consultation responses into account and explain how they had influenced policy.

We propose that key requirements for consultation would be set out in legislation, so they have full statutory underpinning.

*Do you agree, in principle, that these proposals would ensure effective public engagement in the production of national policy statements, including with local communities that might be affected?*

*Are there any additional measures that would improve public and community engagement in their production?*

5. Subject to "effective public consultation" really being effective and responses being taken seriously (not just "box ticking")

## Q.6 Parliamentary scrutiny

We propose that, as ministers would no longer be taking decisions on individual applications, draft national policy statements should be subject to Parliamentary scrutiny.

*Do you agree, in principle, with the intention to have Parliamentary scrutiny for proposed national policy statements?*

*What mechanisms might ensure appropriate Parliamentary scrutiny?*

6. We do not agree, in principle, with ministers no longer taking decisions. Draft statements should be taken to parliament by the ministers.

## Q.7 Timescale of national policy statements

We propose that national policy statements should, in principle, have a timeframe of 10-25 years, depending on the sector.

*Do you agree, in principle, that 10-25 years is the right forward horizon for national policy statements?*

*If not, what timeframe do you consider to be appropriate?*

7. No. 25 years is too long and in any event governments should not necessarily be committed to the policies of outgoing ones.

## Q.8 Review of national policy statements

The Government would consider whether national policy statements remain up to date, or require review, at least every five years. It should consider significant new evidence and any changes in circumstances where they arise and review national policy statements where there is a clear case for doing so.

*Do you agree that five years is an appropriate period for the Government to consider whether national policy statements remain up to date or require review?*

*What sort of evidence or circumstances do you think might otherwise justify and trigger a review of national policy statements?*

8. 5 years or a change of government

## Q.9 Opportunities for legal challenge

We propose that there would be opportunity to challenge a national policy statement, or the process of developing it, when it had been published and that this opportunity would be set out in legislation. The opportunity to challenge would be open to any member of the public or organisation likely to be affected by the policy. The grounds for challenge would be illegality, procedural impropriety or irrationality. Any challenge would have to be brought within six weeks of publication.

*Do you agree, in principle, that this opportunity for legal challenge would provide sufficient and robust safeguards to ensure that a national policy statements is sound and that people have confidence in it?*

*If not, what alternative would you propose?*

9. Not really. Legal challenge can be expensive, time consuming and may well not lead to a satisfactory outcome in planning terms.

## Q.10 Transitional arrangements

Where relevant policy statements already exist we propose that these should acquire the status of national policy statements for the purposes of decision making by the commission. However, in order for this to be possible, they will need to meet the core elements and standards for national policy statements with regard to both content and consultation.

*Do you agree, in principle, that subject to meeting the core elements and standards for national policy statements Paper, policy statements in existence on commencement of the new regime should be capable of acquiring the status of national policy statements for the purposes of decision making by the commission? If not, what alternative arrangements do you propose?*

10. No. These should be new specific policy statements issued, if the proposed system for such statements is adopted.

## Preparing applications for nationally significant infrastructure projects

### Q.11 The preparation of applications

To avoid delays during the decision making process, we propose that promoters of nationally significant infrastructure projects would be required to prepare applications to a defined standard before the infrastructure planning commission would agree to consider them.

*Do you agree, in principle, that promoters should have to prepare applications to a defined standard before the infrastructure planning commission agrees to consider them?*

11. Promoters should have to prepare applications to a defined standard, but we do not agree with the infrastructure planning commission as currently proposed. (Please see answers 1 and 4)

### Q.12 Consultation by promoters

We propose that promoters of nationally significant infrastructure projects should be required to consult the public and, in particular, affected landowners and local communities, on their proposals before submitting an application to the commission.

*Do you agree, in principle, that promoters should be required to consult the public before submitting an application to the infrastructure planning commission?*

*Do you think this consultation should take a particular form?*

12. Promoters should arrange a well publicised public meeting for the local communities concerned, but we do not agree with the principle of the commission in its present form.

### Q.13 Consulting local authorities

We propose that promoters of nationally significant infrastructure projects would be required to engage with affected local authorities on their proposals from early in the project development process.

*Do you agree, in principle, that relevant local authorities should have special status in any consultation? Do you think the local authority role should take a particular form?*

13. Yes. The view of the local authorities should be a major consideration in a ministerial decision.

#### Q.14 Consulting other organizations

We propose that promoters of nationally significant infrastructure projects would, depending on the nature of their project, also be required to consult other public bodies, such as statutory environmental bodies, on their proposals before submitting an application. For instance:

- Health and Safety Executive
- Relevant directors of public health
- Relevant highway authorities
- Civil Aviation Authority
- Coal Authority
- Environment Agency
- English Heritage
- Natural England
- Waste Regulation Authority
- British Waterways Board
- Internal Drainage Boards
- Regional and Local Resilience Fora
- Commission for Architecture and the Built Environment
- HM Railway Inspectorate
- Office of Rail Regulation
- National Parks Authorities
- Mayor of London
- Devolved Administrations
- Regional Development Agencies
- Regional Assemblies

*Do you agree, in principle, that this list of statutory consultees is appropriate at the project development stage?*

*Are there any bodies not included who should be?*

14. National environmental bodies such as the Civic Trust, Heritage Link and the CPRE should be included.

#### Q.15 Statutory consultees' responsibilities

We propose that legislation should impose an upper limit on the time that statutory consultees have to respond to a promoter's consultation.

*Do you agree in principle that the Government should set out, in legislation, an upper limit on the time that statutory consultees have to respond to a promoter's consultation?*

*If so, what time limit would be appropriate?*

15. 2 months suggested

#### Q.16 The infrastructure planning commission's guidance role

We propose that the commission would issue written guidance on the application process, the procedural requirements and consultation.

*Do you agree in principle that the commission should issue guidance for developers on the application process, preparing applications, and consultation?*

*Are there any other issues on which it might be appropriate for the commission to issue guidance?*

16. No. We do not agree, in principle, with the Commission. Advisory Task Force on the lines indicated in the attached press article might be another matter.

### Q.17 The infrastructure planning commission's advisory role

The secretariat of the commission would advise promoters and other interested parties at the pre-application stage on whether the proposed project fell within its remit, on the application process, procedural requirements, and consultation.

*Do you agree in principle that the commission should advise promoters and other parties on whether the proposed project falls within its remit to determine, the application process, procedural requirements, and consultation?*

*Are there any other advisory roles which the commission could perform?*

17. We do not agree in principle, with the commission. An advisory Task Force should certainly advise.

### Q.18 Rules governing propriety

The Government proposes that there should be propriety rules to govern the commission's interactions with promoters and other parties and ensure that the commission did not engage with any party in a way which could be seen to prejudice its decision on an application.

*What rules do you consider would be appropriate to ensure the propriety of the commission's interactions with promoters and other parties?*

18. We do not agree, in principle with the commission. Participants in any Task Force should be free from prejudicial interests and these dealings both transparent and on the record.

### Q.19 The commission's role at the point of application

We propose that, before agreeing to consider an application, the commission would need to satisfy itself that:

- (a) the application fell within the commission's remit to determine;
- (b) the application had been properly prepared; and
- (c) appropriate consultation had been carried out.

In the event that an application had not been properly prepared or consulted on, the commission would direct the promoter to do further work before resubmitting their application. In the event that an application was not appropriate for the commission to determine, the commission would refuse to consider it. This would ensure that the commission only took cases that were appropriate for it to consider, and that it did not begin consideration of cases without adequate preparation or consultation having been carried out.

*Do you agree, in principle, that the commission should have the powers described above?*

*Are there any other issues the commission should address before or at the point of application?*

19. No. We do not agree with the principle of the commission.

## Determining applications for nationally significant infrastructure projects

### Q.20 Scope of infrastructure planning commission

We propose that the commission would deal with development consent applications for nationally significant transport, water, wastewater and waste infrastructure in England, and energy infrastructure in England and Wales, which exceeded statutory thresholds. Chapter 5 of the White Paper sets out some indicative thresholds:

## Energy

- (a) Power stations generating more than 50 megawatts onshore – the existing Electricity Act 1989 threshold – and 100 megawatts offshore.
- (b) Projects necessary to the operational effectiveness, reliability and resilience of the electricity transmission and distribution network. This would be subject to further definition in the relevant national policy statement.
- (c) Major gas infrastructure projects (Liquefied Natural Gas terminals, above ground installations, and underground gas storage facilities). This would be subject to further definition in the relevant national policy statement.
- (d) Commercial pipelines above the existing Pipelines Act 1962 threshold of 16.093 kilometres/10 miles in length and licensed gas transporter pipelines necessary to the operational effectiveness, reliability and resilience of the gas transmission and distribution network.

## Transport

- (e) Schemes on, or adding to, the Strategic Road Network requiring land outside of the existing highway boundary. This would be subject to further definition in the relevant national policy statement.
- (f) A new tarmac runway or infrastructure that increases an airport's capacity by over 5m passengers per year.
- (g) Ports – a container facility with a capacity of 0.5 million teu or greater; or a ro-ro (including trailers and trade-cars) facility for 250,000 units or greater; or any bulk or general cargo facility with a capacity for five million tonnes or greater.

## Water and waste

- (h) Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.
- (i) Works for the transfer of water resources, other than piped drinking water, between river basins or water undertakers' supply areas, where the volume transferred exceeds 100 million cubic metres per year.
- (j) Waste water treatment plants where the capacity exceeds 150,000 population equivalent, and wastewater collection infrastructure that is associated with such works.
- (k) Energy from waste plants producing more than 50 megawatts – the existing Electricity Act 1989 threshold.
- (l) Plant whose main purpose is the final disposal or recovery of hazardous waste, with a permitted hazardous waste throughput capacity in excess of 30,000 tonnes per annum, or in the case of hazardous waste landfill or deep storage facility for hazardous waste, a permitted hazardous waste throughput or acceptance capacity at or in excess of 100,000 tons per annum.

*Do you agree, in principle, that these thresholds are appropriate?  
If not, what alternative thresholds would you propose?*

20. As for question 19.

### Q.21 Electricity system

The inclusion of projects necessary to the operational effectiveness and resilience of the electricity transmission and distribution network is a particular issue. Each link of the network is critical to the effectiveness and resilience of the network as a whole, and thus to ensuring that we can sustainably and cheaply transport power from generating stations to customers. In the circumstances, there is no obvious way to draw a line between national and local projects, although we would be interested in views on where such a line could be drawn.

*Do you agree in principle that all projects necessary to the operational effectiveness, reliability and resilience of the electricity transmission and distribution network should be taken by the commission?  
If not, which transmission and distribution network projects do you think could be determined locally?*

21. . / .

## Q.22 Gas infrastructure

Gas supply infrastructure (eg Liquefied Natural Gas terminals, above ground installations, underground gas storage facilities and pipelines) is covered by a number of consenting regimes with decisions confusingly split between central and local government. As the UK's indigenous gas supplies decline and we move towards increasing import dependence on gas, this infrastructure is becoming more important to the national need for secure energy supplies. Whereas, for some other energy infrastructure, there are set thresholds for responsibility for decision making, this is not currently the case for gas supply infrastructure as their importance is not necessarily determined by size. We therefore propose that nationally significant gas supply infrastructure, as clarified in the relevant national policy statement, should be considered by the infrastructure planning commission.

*Do you agree in principle that the consenting regime for major gas infrastructure should be simplified and updated, rationalising the regime to bring nationally significant decision making under the commission?*

22. . / .

## Q.23 Other routes to the infrastructure planning commission

We propose that, in addition to the projects which exceed the proposed statutory thresholds, the commission would deal with any applications for projects which:

- were specifically identified as being of national importance in the national policy statements
- ministers directed should be treated as nationally significant infrastructure projects. The ministerial power of direction would be exercised on the basis of clear criteria set out in a ministerial statement, or possibly in the national statement of policy itself.

*Do you agree, in principle, that it is appropriate for ministers to specify projects for consideration by the commission via national policy statements or ministerial directions to the commission?*

*If not, how would you propose changing technology or sectoral circumstances should be accommodated?*

23. . / .

## Q.24 Rationalization of consent regimes

In order to simplify and streamline the statutory process for nationally significant infrastructure projects, and ensure that the infrastructure planning commission is able to grant the authorisations necessary to construct these projects, we propose to:

- rationalise the different development consent regimes and create, as far as possible, a unified, single consent regime with a harmonised set of requirements and procedures; and
- authorise the infrastructure planning commission, under this revised regime, to grant consents, confer powers and amend legislation, necessary to implement nationally significant infrastructure projects.
- these authorisations could include:
  - permission to carry out works needed to construct infrastructure projects;
  - deemed planning permission;
  - compulsory purchase of land;
  - powers to amend, apply or disapply local and public legislation governing infrastructure such as railways or ports;
  - powers to stop up or divert highways or other rights of way or navigating rights, both temporarily and permanently; permission to construct associated infrastructure and access land in order to do this (eg bridges, pipelines, overhead power lines and wayleaves);
  - Listed Building Consent, Conservation Area Consent, and Scheduled Monument Consent;
  - hazardous substances consent;
  - creation of new rights over land, including rights of way, navigating rights and easements;
  - powers to lop or fell trees; and
  - powers to authorise any other matters ancillary to the construction and operation of works which can presently be authorised by ministerial orders.

*Do you agree, in principle, that the commission should be authorized to grant consents, confer powers including powers to compulsorily purchase land and amend legislation necessary to implement nationally significant infrastructure projects?*

*Are there any authorisations listed that it would be appropriate to deal with separately, and if so which body should approve them, or that are not included and should be?*

24. "Rationalization of consent regimes" is a subject that worries us greatly. Although this question is ostensibly relating to nationally significant infrastructure projects, we note the reference on page 188 to the DCMS's Heritage White Paper and its "integrated range of measures" for a new system.

**WE ARE VERY STRONGLY OPPOSED TO THE ABOLITION OF CONSERVATION AREA CONSENTS.**

As the law currently stands, the demolition of buildings in Conservation Area without Conservation Area Consent is illegal. That would not be the case with planning permission and such a change would have the effect of legalising the unauthorised demolition of buildings that contribute to the character of Conservation Areas. A non-democratic commission should not, in any event, be the determining authority.

#### **Q.25 The commission's mode of operation**

We propose that the board of the commission would appoint a panel of members (usually three to five) to examine and determine the major applications but that, where it did not feel that a full panel would be required, the Board of the commission should have discretion to delegate the examination of smaller and less complex cases to a single commissioner with the commission's secretariat.

*Do you agree, in principle, that the proposed arrangements for the commission to deal with cases is an appropriate way to ensure that consideration is proportionate and that an appropriate range of specialist expertise is brought to bear on the final decision?*

*If not, what changes or alternative mode of operation would you propose?*

25. as for question 19

#### **Q.26 Preliminary stages**

Once an application was accepted, the commission would secure notification of and consultation with affected individuals, the public, relevant local authorities and, depending on the nature of the application, other public bodies such as:

- Health and Safety Executive
- Relevant directors of public health
- Relevant highway authorities
- Civil Aviation Authority
- Coal Authority
- Environment Agency
- English Heritage
- Natural England
- Waste regulation authority
- British Waterways Board
- Internal Drainage Boards
- Regional and Local Resilience Fora
- Commission for Architecture and the Built Environment
- HM Railway Inspectorate

- Office of Rail Regulation
- National Parks Authorities
- Mayor of London
- Devolved Administrations
- Regional Development Agencies
- Regional Assemblies

*Do you agree in principle that the list of statutory consultees set out above is appropriate at the determination stage?*

*Are there any bodies not included who should be?*

26. as for question 19, but please see also answers to question 14.

#### **Q.27 Examination**

We propose that

- the majority of evidence, given its likely technical nature, should be given in writing, although the commission would have discretion to call witnesses to give oral evidence where it felt that it would help it to understand the issues, or asking a witness to give evidence in writing might disadvantage them.
- the commission would test this evidence itself by means of direct questions, rather than relying on opposing counsel to test it via a process of cross-examination – though it would have discretion to conduct or invite cross-examination of witnesses, if it felt that this would better test the evidence.
- the commission would organise an “open floor” stage where interested parties could have their say about the application, within a defined period of time, where there was demand for it.
- the examination and determination process should be subject to a statutory time limit of no longer than nine months (six months for the examination and three for the decision), but that for particularly difficult cases, the commission might decide that it needed longer to probe the evidence before they could reach a decision.

*Do you agree in principle that the procedural reforms set out above would improve the speed, efficiency and predictability of the consideration of applications, while maintaining the quality of consideration and improving the opportunities for effective public participation?*

*If not, what changes or other procedural reforms might help to achieve these objectives?*

27. as for question 19.

#### **Q.28 Hard to reach groups**

We recognise that some communities can find it hard to engage with formal inquiry processes and may not readily come forward, even though they may be affected by proposals. We are determined to ensure that affected groups and communities can participate effectively and make their views heard in the process. We propose to build upon the long and impressive tradition in planning of people who have found ways to reach out locally, to engage communities and give voice to people who are not usually heard. We propose that, alongside the introduction of the new infrastructure planning system, we will increase grant funding for bodies such as Planning Aid by up to £1.5 million a year so that they can extend their activities and help such groups get involved on site-specific proposals in national policy statements and in the planning inquiries on major infrastructure projects

*What measures do you think would better enable hard to reach groups to make their views heard in the process for nationally significant infrastructure projects?*

*How might local authorities and other bodies, such as Planning Aid, be expected to assist in engaging local communities in the process?*

28. ./.

### Q.29 Decision

We propose that the commission 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. Relevant domestic law for infrastructure sectors would be identified in the planning reform legislation.

*Do you agree that the commission should decide applications in line with the framework set out above?*

*If not, what changes should be made or what alternative considerations should it use?*

29. ./.

### Q.30 Conditions

We propose that the commission would, where it approved an application, specify any conditions, such as mitigation measures, that the promoter would have to comply with. Any conditions would need to be imposed for a purpose directly related to the project and not for any other purpose; would have to be fair and reasonably relate to the development permitted; would have to be precise and enforceable; and could not be so unreasonable that no reasonable authority could have imposed them. The commission would also be obliged to assess the costs, impacts and benefits of proposed mitigation options and satisfy itself that the required measures are a proportionate and efficient solution.

*Do you agree in principle that the commission should be able to specify conditions in this way, subject to the limitations identified, and for local authorities to then enforce them?*

*If not what alternative approach would you propose?*

30. ./.

### Q.31 Rights of challenge

We propose that there would be opportunity to challenge a decision by the infrastructure planning commission or the process of reaching it, when the commission's decision had been published and that this opportunity would be set out in legislation. The opportunity to challenge would be open to any member of the public or organisation likely to be affected by the decision. The grounds for challenge would be illegality, procedural impropriety or irrationality (including proportionality). Any challenge would have to be brought within six weeks of publication.

*Do you agree, in principle, that this opportunity for legal challenge to a decision by the infrastructure planning commission provides a robust safeguard that will ensure decisions are taken fairly and that people have confidence in them?*

*If not what alternative would you propose?*

31. ./.

### Q.32 Commission's skill set

We propose that commissioners would be appointed for their expertise in fields such as national and local government, community engagement, planning, law, engineering, economics, business, security, environment, heritage, and health, as well as, if necessary, specialist technical expertise related to the particular sector.

*What experience and skills do you think the commission would need?*

32. ./.

## Proposals to reform the town and country planning system

### A positive framework for delivering sustainable development

#### Q.33 Delivering more renewable energy

There is an urgent need to make quick progress in extending permitted development on micro generation to non residential land uses. To help realise a further portion of the potential for renewable energy, we will review and wherever possible extend permitted development rights on microgeneration to other types of land use including commercial and agricultural development.

*What types of non residential land and property do you think might have the greatest potential for microgeneration and which should we examine first?*

33. ./.

#### Strengthening the role of local authorities in place shaping

#### Q.34 Joined up community engagement

We propose to seek legislation to remove the requirement for the independent examination of the separate planning Statements of Community Involvement, using instead the new “duty to involve” as the means of ensuring high standards across all local authority and local strategic partnership activities. We think it is important to enable a more joined up approach to community engagement locally. We propose to use the new “duty to involve” to ensure high standards but remove the requirement for the independent examination of the separate planning Statements of Community Involvement.

*Do you agree?*

34. The requirement for independent examination of Statements of Community Involvement was a major break through here in Tunbridge Wells, where some Town Hall officials had shown themselves unwilling to engage in dialogue with residents. Happily, lines of communication are now much better. Nevertheless, the provision should not be lightly discarded. Where enlightened authorities are keen to take public opinion along with them, then examination may be unnecessary and valuable time thus saved. However, cases may well arise where this is not so, and a mechanism should be devised for the Minister to order an examination where communities are unhappy about the manner and scope of involvement.

#### Q.35 More flexible response to a successful legal challenge

Subject to finding a legally robust way forward, we propose to seek legislation to enable the High Court to order that a plan is sent back to an earlier stage of its process rather than back to the start. This proposal would also apply to a Regional Spatial Strategy.

*Do you agree that the High Court should be able to direct a plan (both at local and regional level) to be returned to an earlier stage in its preparation process, rather than just the very start?*

35. Generally yes. But please see answer to question 9.

#### Q.36 Removing the requirement to list Supplementary Planning Documents in Local Development Schemes

We propose to seek legislation to remove the requirement that all SPDs must be listed in the local development scheme which means that local planning authorities will be able to produce them without reference to central government.

*Do you agree, in principle, that there should not be a requirement for supplementary planning documents to be listed in the local development scheme?*

36. No

### Q.37 Sustainability appraisal and Supplementary Planning Documents

We propose to seek legislation to remove the requirement for a sustainability appraisal for every supplementary planning document but we will consult on guidance which makes it clear that a sustainability appraisal should be undertaken for SPDs which have significant social, environmental or economic effects which have not been covered in the appraisal of the parent DPD or where EU law<sup>2</sup> requires a Strategic Environmental Assessment.

*Do you agree in principle that there should not be a blanket requirement for supplementary planning documents to have a sustainability appraisal, unless there are impacts that have not been covered in the appraisal of the parent DPD or an assessment is required by the SEA directive?*

37. Agree that these should not be a blanket requirement, but only one in appropriate cases.

### Making the planning system more efficient and effective

#### Q.38 Permitted development for non domestic land and buildings

We propose to extend the impact approach to permitted development to other types of development such as industrial or commercial buildings as appropriate subject to certain limitations and conditions.

*Which types of non residential development offer the greatest potential for change to permitted development rights?*

*What limitations might be appropriate for particular sorts of development and local circumstances?*

38. Extension of permitted development rights should be approached with extreme caution. We are totally against the granting of permitted development rights for demolition in Conservation Areas (mooted in paragraph 6.0 on page 29 of the Heritage White Paper) for instance. Our answer to question 24 also relates to this topic, and we have raised this important matter with our local MP.

#### Q.39 Neighbour Agreements

Kate Barker proposed the development of a voluntary system, probably for smaller developments, whereby if there was agreement between a developer and neighbours affected, a full planning application would not be required. Kate Barker 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. We have a number of concerns about how this might work in practice, but welcome views.

*What is your view on the general principle of introducing a streamlined process for approval of minor development which does not have permitted development rights and where the neighbours to the proposed development are in agreement?*

39. We share the “concerns about how this might work in practice” expressed in the White Paper, and think the idea better dropped.

#### Q.40 Minor amendments of planning permission

We propose to amend primary legislation so as to allow, at the request of the applicant, discretion for the local planning authority to vary an existing planning permission where they consider that the variation sought is not material.

*Do you agree that it should be possible to allow minor amendments to be made to a planning permission?*

*Do you agree with the approach?*

40. The difficulty with this approach can be that one person's idea of a "minor" amendment can be another person's idea of a major one. Such a change could just result in the system becoming more sloppy and would be better not made.

In conclusion we note the observation in paragraph 1.4 on page 7 of the White Paper which states:

*□On the whole the planning system works well and allows us to encourage a thriving economy, deliver vibrant, healthy communities, protect and enhance our environment, and ensure people have a say in how their area develops.□*

If that is so, then the case for change is, at best, a weak one and, at worst, many of the features that we currently value in the system could be lost.

One change which we would welcome, which is not covered in the White Paper, would be the Right of Consultation and Appeal for the wider Community.

13 August 2007

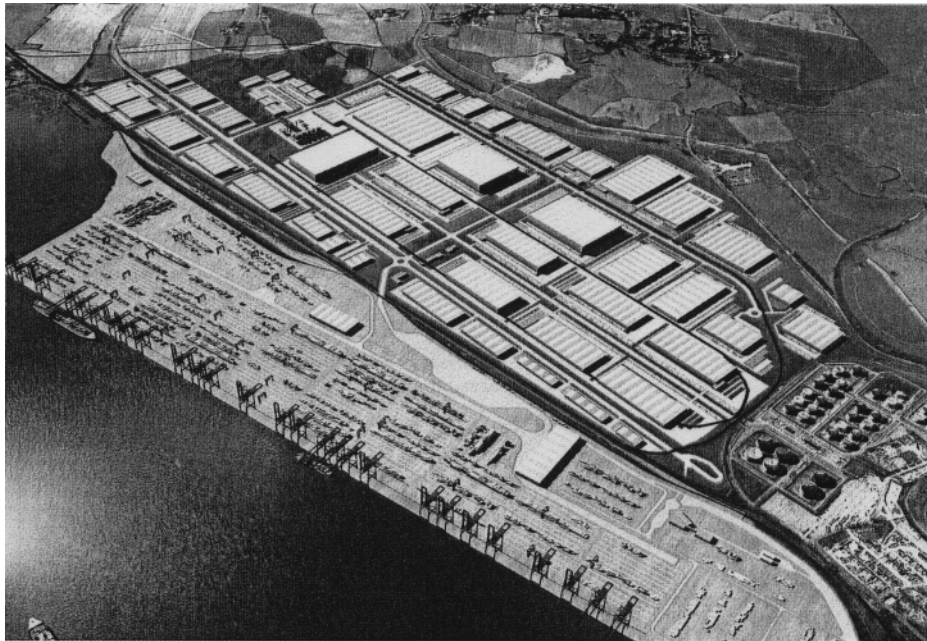
**Name: Dr Philip Whitbourn**

**Organisation: Royal Tunbridge Wells Town Forum ( [www.townforum.org.uk](http://www.townforum.org.uk) )**

**e-mail: [improve-rtw@townforum.org.uk](mailto:improve-rtw@townforum.org.uk) ( Dr Daniel Bech )**

# CALLED TO ACCOUNT

Plans to hive off decisions on major infrastructure schemes to an independent commission raise serious question marks over accountability, says former ministerial adviser *Mike Ash*



Shellhaven: commission procedures may lead to similar problems as port faced over transport

A core principle set out in the planning white paper is that "the system should be transparent and accountable". Yet arguably its most radical idea would significantly reduce accountability.

The proposed infrastructure planning commission (IPC) would decide applications for key national projects (*Planning*, 25 May, p2), replacing procedures that usually involve a public inquiry and ministerial rulings. But will this achieve better, faster decision-making as ministers intend?

The need for clear statements of national policy was one of the main proposals in the December 2001 green paper. The December 2003 aviation white paper got near what is required but other attempts, notably on ports, have not. Similarly, few would dispute the need to rationalise and update legislation on providing major infrastructure or to improve public inquiry procedures.

It is the proposals for the decision stage (*see panel*) that are more worrying. In a democratic society with a free-market economy, intervention via the planning system has always been justified by reference to the externalities of development and the balance between private interests and the wider public good. Despite delegation to officers or inspectors, judgement has

## WHITE PAPER PROPOSALS

- Preparation by the government of national policy statements to establish the case for developments.
- Development of schemes by the promoter, taking account of guidance from the infrastructure planning commission on information and consultation requirements.
- Decision by the commission on whether to grant permission following representations and possibly a public hearing.

until now been exercised by or in the name of accountable ministers and councillors.

While this accountability may be at several removes, it is still vital. Accountability for underlying policy is not enough. Major infrastructure projects affect many and deciding between conflicting interests is rarely just a technical exercise. We should only give up the principle of democratic accountability if there is overwhelming evidence of the need to do so.

Despite the Eddington and Barker reviews, the

evidence for the proposed changes is weak. The government contrasts the time taken to approve Heathrow Terminal 5 and improvements at Amsterdam's Schiphol Airport but does not acknowledge that the latter's fifth runway took 14 years from inception to construction. Neither is there reference to cases that took less time, such as the Channel Tunnel Rail Link (CTRL). The white paper offers limited analysis of delays and hardly any of what can be learned from cases that were consented more speedily.

In my experience, delay is not usually a result of ministerial dithering. The key factors are:

- Procedural flaws earlier in the process that mean a decision would be at significant risk of legal challenge.
- Absence of sufficient evidence on key points.
- The emergence of new national policy.
- The absence of dedicated resources for related public infrastructure improvements.

Inquiries may thus be reopened or ministers may announce that they are minded to make a particular decision subject to further consultation or evidence. Following receipt of the inspector's report on the major port at Shellhaven in the Thames Estuary, it took more than two years to resolve transport and road capacity issues through this mechanism (*Planning*, 1 June, pi).

The proposed statements of strategic objectives will need to include commitments to fund related public infrastructure. Ministers will need to refrain from introducing policy that relates to the project under consideration. But the white paper is correct to say "promoters do not always prepare their applications as well as they could".

This is a key issue. The white paper proposes improving promoters' engagement with agencies, urges proper consultation and promises guidance from the IPC. However, direct involvement will be limited by the need to maintain the commission's position as an independent tribunal under the European Convention on Human Rights. In addition, the IPC may refuse to consider an inadequate application, though this is hardly likely to speed up delivery.

The CTRL was only delivered so rapidly because the hybrid bill procedure allowed the establishment of a team comprising the promoters, their consultants, government officials, lawyers and other specialists. Instead of an IPC, it is possible to set up an authoritative task force on major schemes covering the specialist skills needed for these types of projects.

This task force could work with promoters, local authorities and government from early on to ensure that national and regional policy and procedural issues are fully considered, the communities affected are properly engaged and the project maximises benefits and delivers sustainable development. Engagement should continue through to implementation to ease delivery.

In time, the body would build up expertise and promulgate good practice. The extra effort would go where it is needed, in getting a project right in the first place and helping implementation. The final decision would remain with elected ministers, informed where necessary by public inquiry inspectors' reports. Other processes would be improved as the white paper proposes.

Prime minister Gordon Brown wants to rebuild trust between electors and elected. Taking the elected out of decisions that affect the lives of large numbers of people is not the way to do it. ■

*Mike Ash was chief planner at the ODPM until last year and advised ministers on many major projects.*