THE LONDON GREEN BELT COUNICL

Notes 152 **June 2008**

London Green Belt Council – Notes 152. June 2008.

Natural England and Green Belt

The story of Natural England's extraordinary attempt to rethink green belt principles in order to 'see if they can evolve to fit 21st century circumstances' started last year. Notes 150 reported my protest to Sir Martin Doughty, Chairman of Natural England; and Notes 151 reported his reply of 22nd November 2007, my further letter of 4th January this year, and his further reply of 25th January. It was obviously vital for us not only to ram home to Natural England that it was not for them to try to change the basic principles of green belt policy, but we should also try to ensure that the Government should not be bamboozled by Natural England. To this end our President forwarded our comments to the DCLG on 3rd March, also stressing her own deep concern at some aspects of the Planning Bill (see next item). She received the following reply from Iain Wright, MP, the responsible Minister, dated 21st April:-

This correspondence appears to have been triggered by Natural England, which has begun to develop a policy position on the need for housing growth and for 'green' infrastructure. One element of the draft policy is a recommendation that Green Belt policy be reviewed. This may have been mistaken for Government policy.

The Government will continue to work with Natural England and other stakeholders on the challenges which housing demand and climate change are imposing. However, there are no plans to alter the fundamental basis of Green Belt protection, or the presumption against inappropriate development in Green Belt set out in Planning Policy Guidance Note 2. This position was confirmed by Ministers in the context of the Planning White Paper, Planning for a Sustainable Future, published in May 2007 and available on our website, www.communities.gov.uk/publications.

Members may like to quote this reaffirmation of green belt policy when appropriate. There will be no shortage of occasions. Clearly the Government seeks to distance itself from Natural England, despite the exuberant heading of an article in 'Planning' when the whole matter started last November 'Body blows to a sacred cow.'

Planning Bill

This and the next item are interlinked and are best read as one.

The Bill contains complicated and controversial proposals. It is concerned with speeding up the planning system in relation to nationally significant infrastructure proposals. Particularly objectionable is the power which it would give to Regional Development Authorities, unelected bodies which are, as their name suggests, primarily concerned with built development. We also commented on this matter in Notes 151, and it has since been the subject of correspondence with the DCLG. A statement of our objections of principle was forwarded to Ministers by our President in January. It included the following:-

1) The Bill gave much too much power in sensitive planning matters to an unelected body;

2) It ought not only to reserve much more decision making for Ministers but it ought to be much clearer about what scope would remain for environmental bodies like ours to be properly heard in a set-up which was clearly to be dominated by economic and developmental considerations;

3) The Bill seemed designed to enable the Green Belt (London and Home Counties Act, 1938, to be ignored where at present it provides a valuable safeguard.

It took the DCLG over two months to reply. A long letter was sent to our President by Parmjit Dhanda, MP, (Parliamentary US of S, DCLG) on 20th March. A slightly shortened version of it is as follows:-

Mr Smith is concerned about the proposed infastructure planning commission (IPC). Major infrastructure projects are uniquely complex developments, often involving multiple linked developments. It is not clear that ministers are best placed to make these often very technical decisions about individual projects. Under the Bill, decisions would be taken independently by the IPC, who would be composed of people with well-respected expertise in a range of fields, who would deal with the projects from application through to decision. The IPC would see all the evidence and hear all the representations themselves and make decisions within the legislative framework set by Parliament and policy framework set by Government after public consultation and Parliamentary scrutiny. This would ensure an end to end service of high quality, timely, and transparent decisions.

Mr Smith suggests there is lack of democratic accountability or parliamentary scrutiny over the proposed IPC. Our proposals improve accountability by creating a single regime in which responsibility for setting policy and making decisions is clear and separate. Under the proposals in the Planning Bill, decisions would-be taken independently by the IPC, within the legislative framework set by Parliament and a policy framework set by Government. The IPC would need to give reasons for its decisions and account to ministers and Parliament for its overall performance. A further safeguard is that national policy statements and IPC decisions could also be challenged in the courts.

For example, when taking decisions on applications for nationally significant infrastructure projects, ministers are not free to make decisions as they see fit, or accede to the will of objectors, but must make decisions in accordance with planning law. If they were to do otherwise, the decision could be challenged, and overturned, by the courts.

The role of ministers in the process of providing nationally significant infrastructure is sometimes misunderstood. In fact, these decisions are quasi-judicial, for which ministers are answerable through the legal system. Were ministers to make such decisions for reasons which were politically motivated, they could be subject to legal challenge, and overturned in the courts. Under the new regime, ministers would set national policy and would decide the need for infrastructure, following public consultation and Parliamentary scrutiny. Ministers would also determine urgent projects where the national policy is outdated, or which affect our national security.

On protecting the environment, the Government's vision is for a greener Britain where a new green economy provides greater prosperity and high quality jobs even as it protects the environment. The aim of the Bill is to achieve sustainable development, and our policy is that environmental factors would be considered alongside economic growth and social development in order to achieve this. The Planning Bill proposes a duty on ministers to ensure that national policy statements contribute to sustainable development. National policy statements would also be subject to sustainability appraisal. For large projects there would also be an Environmental Impact Assessment at the commission's examination stage.

On consultation on draft national policy statements, Mr Smith expresses concern that the wording of the Bill implies that consultation is limited to the initial stages and to specific consultees, and that publicity is only obligatory where the proposed policy refers to specific potential sites. However, that is not the Government's intention and it is not what the Bill requires.

The Government is committed to ensuring effective consultation on all national policy statements, because they are the foundation for the proposed system. They will set out the strategic framework for nationally significant infrastructure within which the IPC will take its decisions. It is therefore essential that these statements are well-based and widely recognised as authoritative.

Clause 7(2) of the Bill requires the Secretary of State to carry out such publicity and arrange for such publicity as he considers appropriate. The clause includes other more detailed requirements but the duty in clause 7(6) to consider the responses to consultation and publicity, that Mr Smith cites, applies to the whole consultation process on draft national policy statements, not just some parts.

Mr Smith also expresses concern that Parliament is excluded. Again, this is not the intention. The Bill did not include any reference to Parliament in relation to national policy statements because it is for Parliament to determine the nature of its scrutiny process. However, the Government has encouraged the House to set up a dedicated select committee for this purpose. We have discussed this issue with the Leader of the House and the Chairs of the four relevant Departmental Select Committees, and will continue to do so with a view to developing recommendations which can be put to House in due course.

Mr Smith is also concerned about Green Belt land in relation to the Planning Bill. The way our Bill works in relation to green belt land is to combine the consent regimes arising from the 1938 Act, and the TCPA into the single consent regime; and to give the IPC or the Secretary of State, where he or she is the decision maker, power to authorise the development of both statutory Green Belt land and land designated as Green Belt in a local development plan. An order granting development consent in relation to Green Belt land would therefore have a similar effect to both a planning consent, and a separate consent from the Secretary of State under the 1938 Act.

In deciding whether to grant consent for a development in the Green Belt, the IPC or Secretary of State would be required to adhere to the policies set out in any relevant national policy statement, and to take into account such other factors as may be prescribed. It is intended that not only would national policy statements reflect existing policy on Green Belts as set out in PPG2, but also the Secretary of State would make regulations requiring the IPC or Secretary of State to take into account the purpose for which Green Belt land is held. In this way, the special status of the Green Belt would be protected.

On Mr Smith's point that there is no provision in the Bill for the IPC to determine applications in accordance the local development framework, the primary consideration for the IPC in making decisions is to achieve the objectives that the national policy statement developed after a national debate and Parliamentary scrutiny. Giving local development frameworks equal weight would confuse that clarity of purpose. National policy statements would incorporate planning policy, where it is relevant and, in time, we would expect local development plans to reflect national infrastructure policy. So specifying them in the decision framework in the way Mr Smith proposes would duplicate their role.

Local authorities would be consulted by the promoter of a project under the provisions of part 5 of the Bill and they would no doubt make clear to the promoter how the proposal fits with their development plans. Local authorities would also be statutory parties to the examination of an application and would be able to explain in their evidence how the proposal fits with their development plans. The IPC would of course have to take these factors into account in weighing up whether any adverse local impacts of the proposal outweigh its benefits.

Finally, Mr Smith asks why the IPC would be involved in applications where there is no national policy statement. The IPC would deal with nationally significant infrastructure projects in the fields of energy, transport, water, waste- water and waste. We expect to produce one or more national policy statements in each of these areas. In most cases, therefore, there would be a national policy statement in place covering any application that goes to the IPC, and the IPC would both examine and determine applications.

This is not an easy matter to solve. One must admit that a system which may drag on for years through legal processes does need review, but it ought to be possible to do that without (a) giving

power to an unelected body, and (b) above all selecting as that unelected body one whose interest is so transparently on the side of development. The letter does nothing to reduce those concerns.

The issues here are, of course, much wider than green belt. As regards that, the only point in the letter which I agree with is that relating to the application of the 1938 Act. If a matter has to be referred to the S/S anyway it may be more sensible for the 1938 Act aspects and other aspects to be dealt with in one inquiry rather than two separate inquiries. But it is essential that the decisions really are made by the S/S, not delegated to some other body; and that the new system does not apply, when decisions are to be made under the 1938 Act, in relation to land which is not part of a significant infrastructure scheme.

Overall the letter is wordy and unconvincing and does not remove the objection to delegating decisions with very wide implications to an unelected body whose primary interest is development.

New PPS12: Local Spatial Planning

The previous 12, issued in 2004, attempted at great length to explain the complex features of the local development frameworks which had been introduced under the planning system started in 1999. Authorities which were still, in 2004, trying to produce plans in the format required since 1999 were told that their efforts would remain valid for three years. I think it is probably true to say that there is no planning issue on which there has been more unanimity between all interests, developers, local authorities, and outside groups like ours, than that the system, introduced in 2004 was cumbersome, confusing, and expensive.

So a revised PPS12 was published early in June. It is only half the length of its predecessor (one third if the appendices to the predecessor are counted). It is much more generalised and may or may not make things more intelligible. An explanatory item in the RTPI journal 'planning' includes "The statement offers a much clearer steer on what really matters in devising a vision for future development....The bottom line, however, is whether it will help councils produce sound strategies more quickly. The local development framework system has been in trouble ever since it was launched in the last batch of reforms under the Planning and Compulsory Purchase Act, 2004. Few councils understood what was being asked of them and it was almost inevitable that the first core strategies to be examined were found to be unsound".

The only explicit reference to green belt in the new PPS12 is in its last section, which is headed 'extension of saved policies'. Just as some authorities were still wrestling in 2004 with producing plans under the system invented in 1999 so some are still struggling in 2008 with the flood of instructions issued in 2004, so it has been recognised that the policies still to be produced under the 2004 guidance can last three years. After that, the latest requirements come into force, but if a local authority wants to extend a specific policy from its 2004 plans beyond that three year period it must ask the S/S for a direction to that effect. Paragraph 9(2)(ii) of PPS12 says that in considering such applications 'The Government will have particular regard to ....Policies on green belt general extent in structure plans and detailed boundaries in local plans or unitary development plans'.

Now what exactly does that mean? If it means that the Government recognises that green belt policies may be expected to have a longer life than most policies, that is a good thing; and in view of Ministers' repeated assurances that the Government has no plans to alter green belt policy fundamentally, that could be what it does mean. On the other hand, it has always been possible to alter green belt boundaries when structure and local plans were revised, though the presumption should be against doing so, so it may mean that the Government is not going to let local authorities get away, by extending existing policies, with avoiding reviewing boundaries. It is a first-class example of ambiguous drafting, so all members should keep a close watch on how it is applied in practice, and let us know.

Planning Decisions

1) <u>What are very special circumstances?</u> In a very convoluted decision letter the S/S has allowed the building of a new medical centre, nursing home, affordable and open market

housing, a children's playground, bus interchange, and associated open space, access roads and car parking on green belt land which was formerly a Blue Circle sports ground and adjoining land at Bromley Common. The developer had appealed against Bromley Council's failure to determine the planning application, and the S/S had recovered the appeal for her own determination. Despite the letter's length and the S/S' apparent determination to spell out in great detail every argument relevant to whether green belt constraints should be overridden, the decision letter does not say what the area of the green belt concerned is, but it does say that if 55% of the housing were affordable housing that could mean up to 280 affordable homes.

It was agreed that the development was unacceptable in green belt, but much of the reasoning which the S/S deployed to show that other considerations outweighed that appeared to turn on Bromley Council's alleged failure to meet housing targets over a considerable period, and to show progress towards doing better in future. The decision leaves the impression that there is an element of punishment in the decision rather than a real weighing of other options. Most extraordinary is that in her report the inspector argues that the Council's resistance to developing the site despite evidence of a lack of sustainable alternatives constituted, on its own, very special circumstances sufficient to override green belt considerations. No inspector should have advanced such an outrageous argument, and, to be fair, the S/S did not accept it. Her decision letter records that the Council are entitled to disagree with the recommendation of an earlier inspector, who reported on Bromley's UDP. But, the S/S said the evidence that Bromley had not since made progress with alternative proposals in the face of evidence that it would be impossible to meet housing targets without using green belt did constitute very special circumstances.

2) More on Gypsies. I have no difficulty whatsoever with the concept that gypsies and travellers should have a recognisably fair status and treatment before the law, including planning law, but the attempts to provide this in a situation where many on one side want a fairly rigid structure and many on the other play on emphasising their different way of life makes it very difficult to see any consistent pattern overall. We would agree with some conclusions and deplore others, but not feel that any satisfactory framework of precedent was being built up.

In Surrey Heath district a family of Irish travellers purchased and moved onto a site in green belt in 2002. In the same year they applied for a change of use to gypsy caravan site for three caravans plus a tourer. That was refused in 2005 and an appeal was dismissed in 2004. Later in 2004 the council applied for a permanent injunction against such use of the site. That was granted, but the judge allowed a delay of three months to vacate the site and five months to demolish buildings. The injunction was ignored, and in April 2005 the Council sought and obtained an order for committal to prison for failing to heed the injunction. The Court suspended it for three months to give the family time to get out. They left the site in June 2005. In 2006 their legal representative applied for the injunction to be varied to enable the family to live there for five years whilst a planning application was being considered. The judge was unable to consider it without more information about the proposal's possible impact on a Special Protection Area. Meanwhile the planning application was waiting and the present decision appears to arise from an appeal against failure to decide it. The application concerned is dated June 2006.

Matters considered at the appeal and covered by the decision letter included the green belt status of the site, highway safety and visibility from the access to it, distance and nature of access to schools and surgery, location and availability of approved gypsy sites, medical histories of the family, location of the site in relation to the Thames Basin Heaths Special Protection Area, a Special Area of Conservation, a Site of Special Scientific Interest, and a National Nature Reserve which is apparently much appreciated by Dartford Warblers, Woodlarks, and Nightjars; and various matters relating to human rights and equality of opportunity.

The inspector found that 'the other material considerations weighing in favour of the development do not clearly outweigh the considerable harm caused by the development in terms of the impact on the green belt, on highway safety and on vehicular usage, and consequently very special circumstances do not exist'. He dismissed the appeal.

I understand that the gypsies are now appealing on the basis of human rights.

Green Belt in Japan?

In mid-May I received a phone call from a man who described himself as the locations coordinator in Britain for Japanese television. He explained that Japanese television is producing a film about various aspects of English countryside, including green belt. The producer, a lady named Ayako Korno, who spoke no English, wanted to discuss various aspects of green belt, and could I do it? Fortunately the coordinator, a freelance specialist in this sort of thing, would act as interpreter.

They came to my home on 11th June and after a general discussion I guided them on a circular tour which took in various aspects which interested Ayako. Apart from strictly green belt matters she wanted to discuss the history of garden cities, what considerations, e.g. overcrowding, pollution, disease, etc, started the pressure for such developments, and how far back that went. What seemed to puzzle her was why the English wanted so much protected open space when they already (at least compared with Japan) have a huge amount, even in London.

I took them from Potters Bar via Essendon to Hertford, where we had lunch in a riverside cafe which my wife and I use frequently, then along minor toads on the western boundary of Hertford (so as to show them the clean-cut green belt/built up boundary), and on to Old Welwyn. As we were so close to Welwyn Garden City Ayako asked to be taken there - she had started the discussion over lunch by asking whether I had heard of Ebenezer Howard. We then came back to Hertford, where she stopped to photograph the entrance gates to Hatfield House, and back via the old A1, now A1000, to Potters Bar.

In the course of the tour I was asked to suggest a high vantage point from which the television film crew could take a panoramic view showing green belt and built-up areas in an extensive vista, and I suggested the splendid outlook from a car park in Old Reddings, north of Harrow, which I often visit. From there one can get superb views with London on the left-hand side, with Harrow-on-the-Hill church in the near distance, down towards Staines and near London Airport on the right and, much further south, the Surrey hills. So when they dropped me off home again they set off to Old Reddings. I found out later that Ayako had been much impressed but had thought that a better panorama would be obtained from Harrow-on-the-Hill church, so they moved on there. Having admired the view from the church Ayako thought it would be even better from the top of the church tower, and I now understand that they have permission to film from there. In addition the coordinator is seeking a farming family which has farmed the same land since before the creation of the green belt.

The film which Japanese TV is planning will last two hours. The camera team is expected to be here about 10th July, and I have been asked to be available for interview if possible. In talking to Ayako I stressed the two fundamental points which are so often misunderstood, even in this country, that the quality of the scenery has nothing to do with the designation or continued protection of land as green belt; and that, whatever may be said at election time, there is no substantial difference between the political parties on green belt. The fundamental purpose of the green belt is just to be there.

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Comments and contributions, to R.W.G. Smith.