THE LONDON GREEN BELT COUNCIL

Notes 155 **October 2009**

Planning Act 2008, and Major Infrastructure Planning

One of the major purposes of the Act is to create a new Infrastructure Planning Commission to manage a new system for securing consent to major infrastructure developments in England and Wales. These would relate to energy, transport, water, and waste disposal proposals. The aim is not merely to speed up the existing processes but to replace the present weird conglomeration of planning consents, appeals, hearings and delays which have to be coped with when a major proposal spans many local government areas, planning authorities, etc. The Act has 242 clauses and 14 schedules and is 204 pages long. In effect it provides an entirely new system, whereby the government will provide basic policy statements covering all these areas and (very loosely speaking) the new Commission will do most of the rest. The Government intends that it will consist of "respected, established, expert professionals - including lawyers".

Much as one might sympathise with the view that a new system is needed to enable major national infrastructure projects to be decided reasonably quickly and not dragged out for years, this proposal, so far as I understand it, which is not very far, goes too far in handing most of the process to appointed commissioners who (however highly respected) will be expected to deal with matters largely on the basis of written legal-style submissions, and in stifling the scope for outside pressure groups and individuals to have an adequate influence on the outcome. True, Parliament changed the Bill during its passage through the House by requiring the Secretary of State to decide whether an appeal should be by inquiry, hearing, or written representations, but that would be all too late.

Whether the process embodied in the Act will really be quicker, cheaper, and more comprehensible than the present ones may be doubted, but it will certainly take years to find out. One government department indicated that 15 bits of secondary legislation may be needed.

There seem to be no specifically green belt points in this, we are but one of many, many specialist interests which could hardly be specified individually but have got to ensure that their interests are properly respected. We shall all have to be alert to how things are developing in practice. I do think (and this is my personal view) that the greater threat to green belt comes from the existence of regional authorities, which consist of unelected individuals, and that that system should be replaced by one that gives other interests more influence than now. See next item about this.

East of England Plan

In a way this can be read in conjunction with the one above, though its origin is quite different. It does not concern a major infrastructure project but it shows how regional housing needs can be unduly influenced under the present planning system which places much too much in the hands of unelected regional authorities whose approach is development-orientated.

Members will be aware that last May the Hertfordshire County Council and St. Albans District Council objected to the East of England plan for very large numbers of new homes built up to 2021. (The papers I have cover various areas, but I think that the figure for Hertfordshire as a whole is 83,000, of which

Welwyn Garden City, Hatfield and St. Albans account for about 20,000). The argument went to the High Court, which upheld the Herts CC / St. Albans appeal and ordered the Government to reconsider the plans. I understand from the County Council that it allowed the figures for the northern part of the county but deleted the others, which included green belt areas and reference to a strategic review of green belt. The papers went back to the Government which is believed to be thinking about producing revised proposals by the end of next spring. I further understand that some interests want a decision well before that, but it seems that much is still wide open. We can all imagine what one of the main considerations is at the present time.

Who should decide planning appeals?

The first item above records that the draft planning Bill was changed by Parliament to ensure that, in relation to major infrastructure projects, the form of an appeal, whether by inquiry, hearing, or written representations, must be decided by the Secretary of State. That, of course, was for really major projects, but I see from the journal Planning that the London Borough of Sutton has gone in the other direction and proposed that ordinary appeals should be decided by councillors and residents, not by an inspectorate; and that the RTPI has dismissed the idea.

We do not always agree with the RTPI by any means but it is surely absolutely right on this occasion. Planning requires stability and logical consistency over a wide field as well as properly sympathetic consideration of local issues. Leaving everything to the whims and influences of purely local considerations and passions would, even assuming the highest intentions by the participants, gradually introduce emotion, inconsistency, and less and less regard to the broader picture. Moreover the implication that local people and councillors, however well intentioned, would do a better job than the planning inspectorate is ludicrous. Though we can all think of occasions when we wished that an inspector had reached a different conclusion, I have the highest admiration for the inspectorate, which I think maintains very high standards in what can often be circumstances of considerable pressure.

Circular on Call-in powers.

A DCLG Circular of 30th March, 2009 makes some changes to the categories of development proposals which have to be referred to regional offices before a Council can approve them. In some categories there is no change. These include development on green belt, areas at risk of flooding, and schemes on playing fields.

Invisible expansion of the Green Belt.

I am used to hearing wild allegations about extensive losses of green belt right, left, and centre, and few acknowledge that it also grows from time to time; but I thought that the following example took some beating. Page 7 of Planning of 1st May says that English green belt lost 170 hectares between 1.1.2008 and 31.3.2009. 10 hectares were removed in Havering, 10 added in Wycombe, and 170 deleted in South Cambridgeshire. Page 4 of the same issue says that ‘improved measuring methods’ have led to an overall increase of 3170 hectares, including taking account of the other figures noted above. I suppose there must be a limit to the growth that can be achieved by this method, but I look forward to the day when images of every last leaf can be recorded by signals bounced off the moon. With ever advancing technology it might eventually be possible, but not I suspect in my lifetime, to bounce off some kind of negative development signal and show the countryside as it was 50 or 100 years ago. But we must not let our admiration for modern technology deflect our concern to do our utmost for the situation as it is now.

Planning Decisions

1). Planning appeals often turn on convoluted arguments on what really amounts to extra development and what does not and, if it does, does it matter? A landowner in Cheshire green belt proposed a house which would then have a footprint 13% smaller than the existing house, but would be

about 5 feet higher and with a total floor area 43% up on the existing one. The council refused the application as conflicting with PPG2. The inspector said that, apart from questions of floor space, attention had also to be given to matters of bulk, mass and scale; and the overall increase in volume would be less than 3%. He noted that the Council had also approved extensions to the existing building that would allow a 33% increase in its floor area. He decided that the overall impact on the openness of the green belt would not be materially different. Where this finally leaves us all is not made clear.

2). We usually assume that we must keep our feet on the ground as regards green belt matters, but that is not always the case. A house-owner in Kent green belt wanted to build a tree house 10 feet up on stilts attached to a tree in a wood next to the house. The inspector refused the appeal, saying that the fact that it was screened and was intended for temporary use by his children did not amount to very special circumstances.

3). Waste, Golf or Green Belt - which comes first? In 2003 a Council approved the use of a green belt site for inert waste processing so long as the site was later part of a golf course. The applicant wanted to extend the waste dispersal period by two years as the current situation was bad for both the waste business, for which he needed more land, and for golf courses. The inspector concluded that neither waste nor golf had much future there and he refused permission for an extension of the present arrangements. Now they are presumably all bunkered.

4). Can a planning decision be based on hypothetical future uses of a site? We usually assume that a planning decision must be based on the current application and circumstances unless, as in the case above, a future use is part of the application and decision. An interesting case, in which the inspector speculated about possible future situations, concerns a proposed stable in Cheshire green belt. The applicant kept shire horses as a hobby and needed the stable for that purpose. The inspector accepted that its proposed scale was not inappropriate for green belt, though the associated field access for large vehicles, loss of verge, and the proposed height and shape of the roof, could be discordant features in the landscape. The proposed stone walls would give the building a permanent appearance, and a timber building would be more appropriate. And if the appellant's enthusiasm for horses waned the council might then be pressed to approve some other use for the building that was less appropriate to the site’s green belt status.

It is the last point that is so interesting. One wonders whether there might already be suspicions that this might happen.

5). The construction of a lagoon, the enclosure of a waste collection area, polytunnel over a fish holding pond, and the erection of a toilet block might seem an odd collection of features of an application and appeal, but the inspector refused the first three and allowed the fourth. They were all on a site at Iver Heath, Bucks. The inspector's individual comments were:

Lagoon. The lagoon itself would not be inappropriate in green belt but the effects of the operations necessary for its construction, e.g. landscaping and the disposal of waste, and the effect on major trees nearby including changing ground levels and the effect of different levels of water on their roots would be likely to cause harm to the visual amenities of the green belt;

Enclosure of a separate waste disposal site. This should be regarded as a new building in green belt terms, and was inappropriate in green belt;

Polytunnel over fish holding pond. The use in connection with existing lakes was not inappropriate but the polytunnel would be. The inspector quoted paragraph 3.5 of PPG2 which makes clear that essential facilities must be genuinely required (the inspector's emphasis) in a given situation; and he could find no evidence of such requirement.

Toilet Block. This could be considered an essential facility, as the lakes were open to the public, so he approved it.

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