



THE NATIONAL ORGANISATION OF RESIDENTS ASSOCIATIONS

Response to the White Paper on Planning for a Sustainable Future from the Department for Communities and Local Government

Introduction

This response to this White Paper comprises the views expressed by member organisations of the National Organisation of Residents Associations (NORA).

NORA has two concerns regarding this White Paper.

The first is a general concern regarding the proposals to set up a new regime for dealing with development consent for nationally significant infrastructure proposals, and the second is the relaxation of planning controls in the town and country planning system. Some of NORA's members' concerns have been expressed in Responses to the other Consultation Papers on the reform of the planning system, in particular the Permitted Development Papers and the Planning Performance Agreements document. Accordingly comments on the White Paper will echo those previous responses.

NORA realises that the current system for the consideration of large infrastructure proposals can lead to prolonged delays in coming to decisions, but it does provide the opportunity for involvement of all the interests relevant to the proposals. There is the suspicion that some aspects of the White Paper proposals appear to reduce both the opportunity for public scrutiny and for the public to contribute both critically and constructively to such proposals. The delegation of powers of decision to unelected individuals appointed by government leads to worries of undue influences being brought to bear on such individuals, and is a denial of the democratic process. The further involvement of Ministers in being able to refer proposals of their choosing for the Commission to determine also appears to be a facility that takes proposals beyond those listed in the White Paper away from elected Planning Authorities.

The proposals for reforms of the town and country planning system appear designed to restrict consultation. The general ethos, presumably generated by the Kate Barker Report, is to facilitate development as if this was primarily the function of the local planning system. It is appreciated that development is needed to maintain and improve the prosperity of our nation, but it is vital that the environment and our heritage are adequately protected. The amenity societies and residents associations are well placed to ensure that such protection is secured not only for today's citizens but also for their descendants and it is to be deplored that the White Paper does not mention them anywhere in the document.

In NORA's responses to the forty questions these concerns are raised, and in particular wherever "public consultation" is mentioned in NORA's answers, NORA expects this to include the amenity societies and residents where appropriate as well as stakeholders and responsible authorities.

QUESTIONS

Q.1 The proposed package of reforms

NORA agrees that there is a strong case for reforming the current system for planning for nationally significant infrastructure projects.

NORA agrees with the production of national policy statements following adequate scrutiny, but such scrutiny should include amenity societies and residents where appropriate and not be confined to the listed stakeholders in the document. Those parties directly affected by large infrastructure proposals must have a genuine opportunity to express their views, opinions and be able to offer advice whether critical or constructive. They must be satisfied that in taking decisions proper weight to their representations has been given, so that they are convinced that democracy is still alive and not replaced by central diktat.

Improving presentations, ensuring that public consultation by developers includes amenity societies and residents where appropriate as well as responsible authorities, streamlining procedures and rationalising consent regimes are all desirable proposals

Setting up a panel may be a reasonable way forward when there are several bodies involved in a particular large infrastructure proposal. Building a major highway or an airport that will affect several local authorities would be best considered by such an over-looking panel, but if only one local authority is involved it seems unnecessary to delegate decisions to an independent commission. When such a panel is needed, then it should be composed of elected members from the constituent local authorities advised by experts in the various fields relevant to the proposal. NORA considers that the appointment of unaccountable individuals to make such important decisions is imposing an undemocratic procedure when it is unnecessary. Adding “independence” to the title of a non-elected commission does not ensure that it is independent, since individuals have been appointed by selection and will have loyalties to their nominators. Government will always be able to over-ride decisions if it thinks fit whatever the composition of the deciding body.

Q.2 Introduction of national policy statements

National policy statements derived from the Election Manifesto issued by the successful party are obviously acceptable, but if they are new then full public consultation and Parliamentary scrutiny are essential.

Q.3 Content of national policy statements

The core issues make a sensible start to the reform, but an assessment of the effect on the community must also be included. This would involve covering the scheme’s benefits as well as its drawbacks for the community.

Q.4 Status of national policy statements

Making the national policy statement the primary consideration and restricting the consideration of adverse consequences to incompatibility with relevant EC and domestic law could imply that decisions would over-ride objections, however cogent, from those being affected by the proposals. The body responsible for decisions on proposals must have room for manoeuvre, be able to use their discretion and not be tied down too much by regulation.

Q.5 Consultation on national policy statements

In order to satisfy public opinion and the electorate, it is essential that consultees on national policy statements must include the amenity societies and residents as well as statutory bodies and stakeholders.

Q.6 Parliamentary scrutiny

The intention to have Parliamentary scrutiny of National Policy Statements is agreed.

Q.7 Timescale of national policy statements

This is agreed.

Q.8 Review of national policy statements

NORA agrees that national policy statements will merit review every five years and at a lesser interval should common sense dictate an earlier review or a parliamentary election takes place.

Q.9 Opportunities for legal challenge

To restrict the grounds of legal challenge to illegality, procedural impropriety and irrationality is to impose an undemocratic restraint on objectors, who may have cogent, valid reasons for the judiciary to examine the statements. It would be wiser to leave the decision to the judiciary whether or not a particular challenge is warranted.

Q.10 Transitional arrangements

The proposal to transfer current policy statements to become national policy statements provided they meet the core criteria is accepted.

Q.11 The preparation of applications

The proposal that applications should be to a defined standard whether it is to be considered by a local authority or by a panel is a sensible suggestion and supported. An advisory body will be needed to decide what should be included in the definitions.

Q.12 Consultation by promoters

This proposal is crucial to the success or failure of any application for a nationally significant infrastructure project. The proposals in the strategy “Sustainable Community Involvement” went some way to meet the concerns of the public, because developers were obliged to expose their proposals for public scrutiny prior to submitting planning application for major projects. It provided opportunities for the public on the one hand to condemn projects and on the other to offer constructive suggestions for the improvement of projects which would both meet public concerns and add to the benefits to the public. Many applicants found this approach a major improvement, since it pre-empted objections and often improved their projects making the planning process easier and quicker.

An important problem in major projects, where the developer does not own the land involved, is the exposure of the intentions to potential competitors, who may “jump the gun” and spoil the operation for the original developer. It may be that the size and nature of nationally significant infrastructure projects falls outside this potential risk.

NORA’s members take the view that residents and their representative organisations must be included in any public consultation on a nationally significant infrastructure project, which affects their environment and their ability to enjoy their property. In some instances this may only affect a small number of people while the particular project may be of benefit to a much larger community, but nevertheless they merit involvement in the consultation and their contribution must be taken seriously.

No doubt other amenity societies will seek a similar commitment, but they do not represent the electorate or the public at large. They have a prime interest in their particular concern with the environment, such as its buildings, the risk of pollution, hazard to wild life or the integrity of the countryside.

The particular consultation needs to be thorough and inclusive, so there should be a list of interested parties meriting inclusion in any study. Each promoter should publish a list of those people and bodies they propose to consult, and there should be an option for additions to this list provided those seeking to be added to the list can justify their inclusion.

Q.13 Consulting local authorities

This must be *sine qua non*.

Q.14 Consulting other organisations

The list of bodies makes sense. NORA considers that it should be added to this list, since it is the only national body that represents the views of a significant number of residents in England.

Q.15 Statutory consultees' responsibilities

There must be a time limit allowed for responses to proposals, and NORA suggests that two months from the date of the offer of consultation should be adequate.

Q.16 The infrastructure planning commission's guidance role

NORA has expressed its disapproval of a non-elected commission but supports the use of elected members as described in the answer to Q.1. NORA's answer to Q.11, which deals with the need for applications to be of a defined standard, does suggest how basic criteria should be established. Apart from these general standards of comprehensiveness and competence, each proposal will require different details. This should become apparent during the initial stages of the process, so that the deciding body can ensure that all the requirements to make an informed decision are provided by the promoter. It is wise to establish general standards as agreed in the answer to Q.11, but it must be left to the deciding body to qualify this, when indicated, for each application.

Q.17 The infrastructure planning commission's advisory role

The proposal that the deciding authority should advise applicants whether or not it is the appropriate body for their application should be *sine qua non*.

Q.18 Rules governing propriety

It is essential that declarations of interest should apply to any members of the deciding body in a planning application. These rules apply to everyone in public office in the UK and cover any matter that would interfere in the impartiality of those making decisions.

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

This is surely covered by Q.11, Q12 and Q.17.

Q.20 Scope of infrastructure planning commission

The thresholds listed are an acceptable description of the remit of the bodies making the decisions on the nationally significant infrastructure projects, whether they are an "independent commission" as proposed or consist of elected members as proposed by NORA.

Q.21 Electricity system

Extension of the proposals to include the electricity network, whether local or national, could lead to an unacceptable workload. It would be wiser to leave such matters to Local Planning Authorities either singly or in cooperation.

Q.22 Gas infrastructure

The answer to this question is the same as in Q.20.

Q.23 Other route to the infrastructure planning commission

NORA members are opposed to the extension of the remit to the deciding bodies beyond the lower limits of the list of thresholds indicated in Q.20. By relaxing the limits not only could the workload become considerable but it could lead to diminishing the quality of the consultation process to the public.

To permit ministers to have direct involvement in the process would undermine the system.

Q.24 Rationalisation of consent regimes

The inclusion of all the planning powers needed to fulfil the planning consent is an obvious necessity. However, it would be wise to permit legal action to object to particular conditions and permissions, when objectors consider they are excessive, too intrusive, unreasonably damaging to the objector or unnecessary to fulfil the project.

Q.25 The commission's mode of operation

This is where NORA parts company with the proposals, which have for the large part been acceptable. The proposal to appoint a panel of unelected members is totally unacceptable. It is depriving the community of democratic involvement in decisions regarding the environment, the heritage and the prosperity of this country.

If the project involves just one local authority, then that local authority should be able to nominate those elected members with an understanding of planning matters to decide the planning application. If several local authorities are involved, then each authority should be able to nominate an elected member to comprise the deciding body. If the number of local authorities is large, then some cross-representation might be agreed.

To nominate one member to make decisions of this magnitude would be improper and place an unfair and unrealistic burden on one person.

Whatever arrangements are made to comprise the deciding body, expert advice and support will be required from highly qualified technicians.

Q.26 Preliminary stages

NORA supports the list of statutory bodies but asks for amenity societies, residents and residents associations to be included.

Q.27 Examination

NORA agrees to proposed format for hearings.

Q.28 Hard to reach groups

NORA has great concerns regarding consultation with residents, who are likely to be affected by the types of projects involved. Where there are residents associations in the relevant areas, they need to be contacted. Usually Local Planning Authorities are fully aware of their existence. The problem remains where there are no such associations, and here this National Organisation through its members, who come from all over England, may be able to assist either by representing residents or by discovering associations through its member organisations.

Q.29 Decision

To define “adverse local consequences” as incompatibility to relevant EC and domestic law including human rights legislation seems unduly restrictive. Will this cover concerns for noise, nuisance, pollution, loss of livelihood, confiscation of property? Article 8 of the Human Rights Act removes the rights of individuals under the very conditions under which the deciding body is proposed to operate:

“There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Consequently we express our concern for residents, who may find they are denied the opportunity to present their objections because of the proposal in Q.29. It would breach the principle of the “Equality of Arms”, since the promoter would not be so restrained.

Q.30 Conditions

NORA agrees with the principle that conditions can be applied with the intent described.

Q.31 Rights of challenge

NORA accepts the restrictions on appeals.

Q.32 Commission’s skill set

NORA’s contention is that those making the decisions should be elected members of local authorities and that they should have the support of the experts in the several fields relevant to the project. This reflects the democratic process and is the system in operation in all Local Planning Authorities. To delegate the power of decision to experts not subject to the democratic process is a retrograde step in democracy.

Q.34 Delivering more renewable energy

NORA has no views on this subject.

Q.35 Joined up community engagement

The imposition of Statements of Community Involvement and the need to prepare Sustainable Community Strategies is a complex system that fails to meet the needs of consultation with the community. Accordingly it is to be hoped that a “duty to involve” can be interpreted appropriately and more flexibly by Local Planning Authorities.

Q.36 More flexible response to a successful legal challenge

NORA supports the flexible approach for High Court challenges,

Q.37 Removing the requirement to list Supplementary Planning Documents in Local Development Schemes

NORA agrees.

Q.38 Sustainability appraisal and Supplementary Planning Documents

NORA agrees.

Q.39 Permitted development for non-domestic land and buildings

It is unclear what types of development are under consideration for industrial or commercial buildings. If it is, for example, expansion in terms of buildings, open space conversion to hard surfacing, the introduction of new processes of production which might be objectionable, then objectors must have the right to present their concerns to the Local Planning Authority. It is difficult to imagine “permitted developments” for such enterprises that would not need full planning consent.

The impact approach is far too limited to apply it to commercial and industrial premises.

Q.40 Minor amendments of planning permission

Current practice in many Local Planning Authorities is to allow minor changes to approved planning applications while the project is undergoing construction. Also some minor changes to an existing development are already approved by Local Planning Authorities without a new planning consent. It is unclear what is meant by “minor amendments” that are not already considered to need a new planning consent. In our view the current situation is acceptable and no change is required.