

Wildlife and Countryside Link Briefing November 2009

Sustainable development, rights and democratic accountability: the new major infrastructure system

Wildlife and Countryside Link (Link) brings together 37 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practise and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic environment and biodiversity. Taken together our members have the support of over 8.3 million people in the UK and manage over 690,000 hectares of land.

Many Link members campaigned on the Planning Bill, as part of the Better Planning Coalition. We acknowledge the work undertaken by the coalition, on which this briefing paper builds. The briefing paper is supported by the following 14 member organisations:

- Amphibian and Reptile Conservation Trust
- Butterfly Conservation
- Campaign to Protect Rural England
- Campaign for National Parks
- Council for British Archaeology
- Friends of the Earth England
- The Grasslands Trust
- Open Spaces Society
- Plantlife International
- Ramblers
- Royal Society for the Protection of Birds
- The Wildlife Trusts
- Wildfowl & Wetlands Trust
- Woodland Trust

The organisations listed here have come together out of a deep concern that we need to ensure a fair planning process that delivers sustainable development. We are far from convinced that the new system will do this. We believe the legal framework is flawed and needs changing.

Good planning is essential for sustainable development and to deliver integrated economic, environmental and social benefits. The Planning Act 2008 establishes a new system for planning major infrastructure in England and Wales. Much of it is welcome; society needs to make decisions about the major infrastructure (roads, railways, power stations, airports, waste) we need in a timely and efficient manner. But an undemocratic decision-making Commission, the removal of the existing rights in the inquiry system, and the failure to require the decision to properly consider sustainable development will not deliver the kind of infrastructure Britain needs for the future, nor will it build consensus around decisions.

National Policy Statements must deliver sustainable development and climate change mitigation and adaptation

The 2005 UK Sustainable Development Strategy, *Securing the Future*¹, established the twin goals of living within environmental limits and providing a just society by means of a

¹ 2005 UK Sustainable Development Strategy, [Securing the Future](#)

sustainable economy, good governance and sound science. The duty on Ministers to consider sustainable development and climate change in the preparation of National Policy Statements must mean rigorous assessment in order to ensure that these statements can set out an effective framework for the delivery of a low-carbon, sustainable economy. As the Infrastructure Planning Commission will be making decisions in line with National Policy Statements, it is essential that clear guidance is given and that this respects existing protections for the natural environment. The cumulative impact of the decisions of the IPC will impact heavily on whether the UK can deliver low-carbon infrastructure.

Link recommends that appraisals must carefully consider the carbon, landscape and biodiversity impacts of policies, taking into account a full range of alternatives.

National Policy Statements must have effective public scrutiny

The National Policy Statements are likely to be lengthy documents and complicated to respond to. Site-specific National Policy Statements also raise legal issues around people's right to be heard.

Link recommends that National Policy Statements are subject to wide and thorough public consultation, particularly in affected communities.

Decisions must be democratically accountable

The decision-making Infrastructure Planning Commission (IPC) is unelected and unaccountable. In the view of the Courts, Ministers make 'administrative' decisions, in which they are politically accountable and in respect of which they have to act lawfully. In addition, the importance of democratic accountability in planning has been famously noted by Lord Nolan: "To substitute for the Secretary of State an independent and impartial body with no central electoral accountability would not only be a recipe for chaos; it would be profoundly undemocratic."² The IPC will not be sufficiently accountable to Parliament and the public in taking decisions of national and often international importance. No matter how good the framework set out in National Policy Statements, we remain of the view that the IPC should be incorporated into the Planning Inspectorate and should make recommendations to Ministers, not the final decision.

Applications must be prepared to a high standard

Pre-application consultation opportunities are welcome, but may be seen as biased and flawed by communities, as they are run by the developers themselves.

Link recommends that the Commission adopts a high standard when it validates applications and is prepared to reject applications which are not properly thought-out or consulted upon.

Development proposals will usually have to undergo Environmental Impact Assessment and, where Natura 2000 sites are affected, Habitats Regulations Assessment.

Link recommends that the Commission should encourage developers to agree the key environmental issues and information required at an early stage by seeking a scoping opinion and consulting widely with statutory agencies and environmental NGOs.

Examination procedures must be accessible

There is a presumption that the Commission will take evidence through written representations, and the decision on whether to have a public hearing is also at the

² *R (Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions and other cases* [2003] 2 A.C. 295

discretion of the Commission. There are opportunities to appear at an 'open floor' session, but no right to cross-examine in order to test important evidence.

The Infrastructure Planning Commission, and the regulations surrounding the involvement of people at the inquiry into projects, must clearly ensure that it is neither complicated nor difficult to participate, and that all parties have an opportunity to test the evidence.

Link recommends that the Commission adopts a presumption in favour of cross-examining disputed evidence, and that people do not have to submit written evidence if they want to attend an open floor hearing.

**Wildlife and Countryside Link
November 2009**

For further information please contact Fiona Llewellyn at Link on 020 7820 8600, or email fiona@wcl.org.uk

