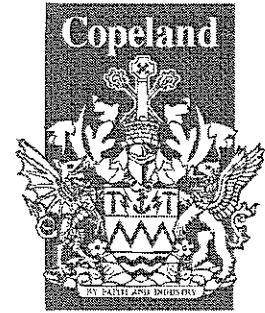


Copeland Borough Council

The Copeland Centre,
Catherine Street, Whitehaven,
Cumbria CA28 7SJ
Telephone (01946) 59 83 21
Fax: 01946 598303
Website: www.copeland.gov.uk
Email: fmcmmorrow@copelandbc.gov.uk



Acting Chief Executive
Fergus McMorro

The Rt Hon John Healey MP
Minister for Housing and Planning
Department for Communities and Local Government
Eland House
Bressenden Place
London SW1E 5DU

05 January 2010

Dear Mr Healey

Burden on Local Authorities from the Planning Act 2008

I am writing further to the invitation you gave at the Infrastructure Planning Commission launch event on 22 October in London, where you said that you would be willing to hear arguments that the Planning Act 2008 places a new burden on local authorities, which should therefore be compensated by virtue of the 'new burdens doctrine'. In fact, the new burden does not arise purely from the Planning Act (although that does introduce several new responsibilities) but also from government policy – recently embodied in the first draft National Policy Statements – on the urgent need for new infrastructure.

Local authorities are sympathetic to the new regime in general, and want to contribute to its success. Lack of resources may mean that they are unable to fulfil the roles allotted to them and as a result slow down the application process, be unable to give meaningful support or at worst, stand outside the process altogether. This will reduce community engagement and increase the potential for opposition, through the inadequate knowledge about the project and lack of assessment and mitigation of impacts. Where the National Policy Statements set out the benefits of a project, it is for local authorities to provide an objective assessment the adverse impacts and how they could be mitigated, the other side of the key test faced by the Infrastructure Planning Commission.

New burden

This document can be made available in alternative languages and formats on request



I quote the new burdens doctrine in full, as given on the CLG website:

“A new burden is defined as any new policy or initiative which increases the cost of providing local authority services. The new burden need not necessarily arise as a result of a proposed statutory duty. For example, guidance to act can result in additional costs falling on local authorities, putting pressure on council tax.

Government as a whole are committed to ensuring new burdens falling on local authorities are fully funded. This commitment is called the New Burdens Doctrine”

The argument that local authorities have a considerable new burden placed on them is fourfold:

- (a) local authorities have several new responsibilities in the Planning Act 2008;
- (b) responsibilities for a particular project extend to a wider group of local authorities;
- (c) local authorities will lose funding, and
- (d) the responsibilities caused by government policy on infrastructure do not apply uniformly, with low-density rural authorities more likely to have to deal with one or more applications, which are much larger than average.

Each of these issues is dealt with in turn.

New responsibilities under the Planning Act

Local authorities have responsibilities at four stages: at the stage of setting policy, the pre-application stage, during the consideration of applications and after applications have been granted. The first two of these are new, and the other two are increased.

National Policy Statements

All local authorities are consulted on the contents of each National Policy Statement when it is issued in draft, as seven were on 9 November¹. Although local authorities are presently free to respond to policy consultations in general, they have not hitherto been named as statutory consultees on energy, transport, water, waste water or waste policy.

Additionally, the government must consult local authorities on how to publicise a draft National Policy Statement that identifies locations as suitable or potentially suitable for nationally significant infrastructure projects.² This places the responsibility squarely on local authorities of ensuring that local people are able to participate in the development of NPSs, one of the much-touted three opportunities that people will have to participate in the new process. One of the NPSs that were published on 9 November does indeed identify ten locations and so this responsibility has been engaged.

Before applications are made

¹ Regulation 3(3)(e), Infrastructure Planning (National Policy Statement Consultation) Regulations 2009

² Section 8(1), Planning Act 2008

The Planning Act introduces a statutory pre-application consultation regime for the first time. Local authorities are central to this. This is reflected in CLG guidance to applicants, which states *'To achieve [effective consultation], it is essential that promoters understand the local communities who will be affected by their planned application. Promoters should therefore work closely with the relevant local authority to gain this understanding, as the local authority will have a detailed knowledge of the community, including consulting local people on planning matters'*³

Local authorities at or near the site of an application are consulted directly as part of this pre-application consultation⁴.

As with NPSs, local authorities also have role in proposing how the local community should be consulted, through being consulted on the applicant's draft 'statement of community consultation'⁵. The guidance emphasises the importance of the local authority's view: *'Where they have not followed the local authority's advice, promoters will need to present their reasons to the IPC'*⁶

Local authorities have a third role in the pre-application process in that they are entitled to submit a report on the adequacy of the applicant's pre-application consultation to the IPC, which the IPC must take into account when deciding to accept an application, the only third-party document with this status.⁷

None of the steps set out above can be characterised as 'formalising current best practice', which is the current DCLG line rebutting the suggestion of a new burden. Applicants do not need to carry out any pre-application consultation at present, and so often the first that the local authority knows about an application at present is when it is made, either to them or to the Secretary of State.

After applications are made and before they are decided

The principal role given to local authorities during the consideration of an application is that of preparing a 'Local Impact Report'⁸. This will be the opportunity for the local authority to present an analysis of the impact of the application on its area to the IPC and in particular its consistency with local and regional planning policies. The disproportionate amount of work that this will require is considered further below under 'disproportionate application of Planning Act regime'.

Local authorities also have minor roles when their own land is to be acquired by a public authority applicant⁹ or Green Belt land is to be acquired¹⁰, and can enter into

³ Paragraph 17, Planning Act guidance on pre-application consultation

⁴ Section 42(b), Planning Act 2008

⁵ Section 47(2), Planning Act 2008

⁶ Paragraph 45, Planning Act guidance on pre-application consultation

⁷ Section 55(4)(b), Planning Act 2008

⁸ Section 60(2)(a), Planning Act 2008

⁹ Section 128, Planning Act 2008

¹⁰ Section 147(2), Planning Act 2008

planning obligations (s106 agreements) as they can with conventional planning applications¹¹.

After applications have been decided

Finally, local authorities have a role in policing the implementation of development consent orders (DCOs) and development in the absence of a DCO. There are rights to enter land¹², require information from landowners¹³, serve notices of unauthorised development¹⁴, carry out restoration works not carried out by the developer¹⁵, and apply for injunctions¹⁶. Local authorities have not had to enforce the equivalent of conditions of a DCO before.

Greater number of local authorities involved

Where previously a planning application would normally be dealt with solely by the district-level or unitary authorities whose areas contained the land in question, the Planning Act places the more significant of the above duties on neighbouring and higher-tier local authorities as well.

These additional local authorities are much greater in number than might be at first realised, when one considers that both district and county level authorities are involved and each of their immediate neighbours at district or county level.

For example, Sellafield, one of the ten nominated nuclear sites, is in the areas of Copeland Borough and Cumbria County Councils. These have as neighbours the councils of Allerdale, Carlisle, Barrow-in-Furness, County Durham, Craven, Dumfries and Galloway, Eden, Lancashire, Lancaster, North Yorkshire, Northumberland, Richmondshire, Scottish Borders and South Lakeland.

All sixteen of these councils, rather than just the single local planning authority, will have responsibilities to advise on local publicity for the NPS, respond to consultation on the application before it is made, make 'adequacy of consultation representations', and submit local impact reports. It is difficult to see how an increased number of responsibilities, applied to sixteen times as many local authorities can be characterised as a neutral effect of the new regime.

Loss of funding

On the negative side of the balance sheet, the Planning Act removes the need for planning permission for nationally significant infrastructure projects¹⁷, and thereby deprives the local planning authority of the application fee. Almost all of the 16 types of nationally significant infrastructure project that the Planning Act is concerned with

¹¹ Section 174(2)(c), Planning Act 2008

¹² Sections 163 and 164, Planning Act 2008

¹³ Section 167, Planning Act 2008

¹⁴ Section 169, Planning Act 2008

¹⁵ Section 170, Planning Act 2008

¹⁶ Section 171, Planning Act 2008

¹⁷ Section 33(1)(a), Planning Act 2008

would currently require a planning application to be made to the local planning authority.

The amount lost in this way will be a very small proportion of the financial burden on local authorities loss for larger projects, but nevertheless it adds weight to the new burden argument.

Disproportionate application of the Planning Act regime

Government policy on the urgent need for new infrastructure will hasten the development of large projects that will fall under the new Planning Act regime, particularly energy projects. The current estimate of the IPC is that it will receive 45-50 applications in its first year of operation. This compares with about 350 local planning authorities in England and Wales, and so at most only 15% of local authorities will be affected directly, although many more will have responsibilities as neighbouring authorities, as outlined above.

Some authorities will have to deal with multiple applications – linked projects such as power stations and their grid connections, or port development and associated road and rail links, or have simply been identified as suitable for several projects, such as Copeland with its three nominated nuclear sites. The Act will therefore apply disproportionately and infrequently to a relatively small number of local authorities.

By their nature, too, major infrastructure projects tend to be sited away from large centres of population because of their impacts. The impact of the Act will therefore tend to be felt by smaller rural authorities that have lower staffing levels and less exposure to major applications than average.

Those authorities that find themselves dealing with a nationally significant infrastructure project will have an unusually large workload to deal with compared with other planning applications. In order to assess the impacts of the project and the steps needed to mitigate them for the purposes of the Local Impact Report, a variety of specialist commissions, by their nature costly, will be needed over a sustained period starting well before an application is made.

Mitigation will take the form of changes to the project, the addition of requirements (conditions) to the development consent order, and through the development of s.106 agreements. The absence of properly developed proposals for mitigation (from a party other than the promoter of the project) could prove critical in the approval or rejection of the application.

These major projects will also have a knock-on effect on the remainder of the host authority's area. There will be shifts in population and changes to the need for housing, transport, education, health and other infrastructure. This will necessitate changes to the policies in the authority's local development framework that would not have been required otherwise.

Counter-argument

The counter-argument is that the Planning Act merely formalises existing best practice, and that any financial burden can be met by seeking a Planning Performance Agreement (PPA) or other funding from a developer by using section 93 of the Local Government Act 2003. This is an insufficient response.

For a start, applicants are less likely to pay a body that is not the decision-maker to ensure that the application is dealt with according to an agreed timetable. Indeed, negotiating a timetable after the pre-application stage is unnecessary, as there are statutory time limits in the Planning Act. Much of the work that local authorities will need to carry out will take place well before an application is made and before a PPA is likely to be able to be negotiated.

There is therefore no guarantee that PPAs will be able to be negotiated with local authorities at all or if they are, that they will cover the full financial burden. In any event a PPA would only be likely to be negotiated with the authority in which the development lay, and not any of the neighbouring authorities.

There is also the perception that being funded by a voluntary payment from an applicant may be seen to reduce the objectivity of local authorities, however unjustified.

Finally, the Planning Act needs to be seen in the context of government policy on energy, transport, water, waste water and waste. An urgent need for infrastructure is identified, particularly for the first of these, and the burdens on local authorities should be seen as deriving from a combination of the Planning Act and policies on need, rather than the Act alone.

Conclusion

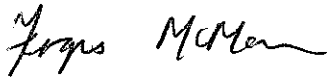
The Planning Act 2008 places a new burden on local authorities by increasing both the number of responsibilities and the number of authorities affected, while removing the fees available to them. Government policy on the need for infrastructure will accelerate the visitation of some of the largest applications for development in the country on a low number of smaller than average authorities.

The government should recognise that there is a new burden on those local authorities where NSIPs are situated, as well as their neighbours, and fund such authorities appropriately to enable the new Planning Act regime to work as it was designed.

A proper assessment should be undertaken of the actual cost of carrying out all the responsibilities outlined above, taking into account the number of authorities involved. The cost could then be made up by developers (compulsorily rather than voluntarily to eliminate suggestions of bias), the IPC, the government or a combination of all three. It is likely that the overall increase will only amount to a small proportion of the estimated £300m annual saving as a result of the introduction of the new regime, and a small proportion of the cost of a project, but it will make a significant difference to the authorities involved and the success of the new regime.

I trust that you will reflect on the arguments above and reconsider your position.
I look forward to hearing from you.

Yours sincerely



Fergus McMorrow
Acting Chief Executive