BRIEFING

PLANNING BILL **December 2007**

SUMMARY AND INITIAL HBF COMMENT

1. The Planning Bill was introduced to the House of Commons on 27th November 2007. In the press release announcing the Bill, CLG declared that the Bill would *"make the planning system quicker, more transparent and easier for the public to become involved".*

2. The Bill and an explanatory note, prepared by CLG, which form the basis of this summary, can be downloaded from http://services.parliament.uk/bills/2007-08/planning.html

Parts 1-8 Infrastructure Planning Commission.

3. Parts 1-8 of the Bill create a new system of development consent for nationally significant infrastructure projects. This new system will be supported by a new independent body to be called the Infrastructure Planning Commission. The Commission will be responsible for examining and deciding planning applications for nationally significant infrastructure projects. Such projects are defined in the Bill as being:

- Generating stations
- Electric lines
- Underground gas storage
- Pipe-lines
- Highways
- Airports
- Harbour facilities
- Railways and rail freight interchanges
- Dams and reservoirs and transfer of water resources
- Waste water treatment plants
- Hazardous waste facilities

4. Although the Bill does give the power to the Secretary of State to add or remove types of project from the defined list.

5. The Bill sets out the various administrative procedures and powers of the Commission. Commissioners will be appointed by the Secretary of State and will be supported by a Chief Executive and staff.

HBF Comment:

6. The proposal to establish the Commission will be the most controversial part of the Bill and is sure to grab the bulk of the news headlines and the debates in the House of Commons and Lords.

7. The need for the Commission is explained by Government as needing to speed up the planning process for such major projects which currently take many years to proceed through the existing planning process. The target is to take no longer than a year to decide such proposals.

8. While it is unlikely that major housing proposals (or new towns) will be processed by the Commission, one of the knock on benefits may be the increased certainty and economic benefits of the commitment to major infrastructure that the new process might bring.

Part 2: National Policy Statements

9. The introduction of National Policy Statements is set out in Part 2 of the Bill.

10. The policy set out in a national policy statement may define the amount, type or size of development which is appropriate nationally or for a specified area and the criteria that should be applied to the consideration of applications for such development.

HBF Comment:

11. In effect, such statements will be generally be used to guide the Commission in their consideration of nationally strategic infrastructure although it is conceivable that a NPC in respect of housing could be produced to determine the regional allocation of national housing figures.

Part 9: Changes to Existing Planning Regimes

12. Part 9 of the Bill introduces proposed changes to the Town and Country Planning regime discussed below.

13. **Clauses 143-145** deal with specific issues related to S106 agreements by promoters of nationally important infrastructure and the issue of potential blight created by national policy statements.

14. **Clause 146** removes the need for supplementary planning documents to be included in a local development scheme and thus require the prior approval of the Secretary of State to be produced.

15. The clause also removes the need for SPD and statements of community involvement to be subjected to sustainability appraisal.

HBF Comment:

16. Although these proposed changes appear initially innocuous, the removal of SPD from the published and agreed local development scheme (in effect, the local authority's

business plan for production of local development documents) will give even less authority to the government offices to ensure that SPD do not introduce new policy. This is a growing problem where LPAs are seeking to avoid the formal procedures and independent examination of policy documents.

17. **Clause 147** requires LPAs to include policies in their development plans which take action on mitigation and adaptation to climate change.

HBF Comment:

18. This clause is a general clause which places a responsibility on LPAs to include climate change considerations in their emerging policy documents. The specific way in which they should do this will be set out in the forthcoming supplement to PPS1 on climate change, due to be published before Christmas.

19. **Clauses 148 and 149** allows the High Court to give directions on development plans in England and UDPs in Wales as to the stages of the plan that need to be revisited in order to be undertaken satisfactorily. At present it is only possible for the courts to quash the whole plan and for the process to be restarted from the beginning.

20. **Clauses 150-154** introduce a new formalisation of procedures to allow decisions on planning applications to be undertaken by officers with the ability for the decision to be reviewed by the LPA if required.

21. The types of applications to be determined by officers must be specified by the LPA and regulations will set out what types of applications will be considered appropriate for inclusion in such lists.

HBF Comment:

22. These clauses formalise the common practice of delegated decision making in a large number of local authorities. Presumably the reason behind the move is to ensure that all authorities make better use of these powers and allow minor applications to be determined quickly by officers rather than having to follow the more formal process of decisions by a committee of LPA elected members.

23. **Clause 155** removes the entitlement to compensation for development granted by a development order or local development order where 12 months notice of withdrawal of the order is given.

HBF Comment:

24. Note that this clause does not amend the right to compensation where planning permission is revoked or modified, only where permission has been previously granted by a development order and where 12 months notice of withdrawal of those rights has been given.

25. **Clause 156** introduces a power for local planning authorities to be able to make a non material change to a planning permission once it has been granted. This includes imposing new conditions or removing or altering conditions.

HBF Comment:

26. Although this change was conceived as a way of correcting minor mistakes on planning permissions it is of some concern. The definition of non material is not expressly set out in this clause, leaving the discretion to the local planning authority. It is, therefore, of some concern that new conditions might be imposed on extant planning permissions.

27. **Clauses 157 and 158** remove the control of tree preservation orders from primary legislation to secondary legislation of regulations and deals with transitional arrangements for so doing.

28. **Clause 159** allows various public sector bodies to over ride easements on land on which they grant planning permission. Compensation is payable.

29. **Clause 160** allows the Secretary of State to determine the procedure by which certain appeals should be considered. These are written representations, informal hearing or local inquiry. The clause requires the Secretary of State to publish the criteria against which the choice of appeal hearing will be assessed.

HBF Comment:

30. The Planning Inspectorate (representing the Secretary of State) already publish criteria against which they advise appellants of the most appropriate method of appeal. This is unlikely to change in the new regime. It is, therefore, unlikely that an appellant seeking a particular type of hearing would be denied their choice.

31. However, applications for costs against a local planning authority are only heard at a local inquiry. Thus, if the choice of appeal procedure is not in the gift of the appellant the costs regime must be amended to allow such applications under any of the three appeal procedures. It is understood that such amendments are being made to the appropriate regulations.

32. **Clause 161** proposes to tidy up a discrepancy in the planning Act regarding fees payable in the event of an enforcement appeal. Currently a fee is payable to both the local planning authority and the Secretary of State (through the planning inspectorate). The amendment allows for a fee to be paid to either the local authority or the Secretary of State as well as to both. The circumstances under which the new payment proposals would operate will be defined in regulations.

33. **Clause 162** introduces the ability for the Secretary of State to charge fees for appeals. The rate of fees and conditions under which they will be payable will be set out in Regulations.

HBF Comment:

34. Paying for appeals has, hitherto, been resisted by HBF. However, it is almost inevitable that public funding of the appeals system will cease in the way that fees were introduced on planning applications.

35. Thus, while we will continue to resist this additional cost it may be prudent to focus on how the regulations might be drafted to reflect the reasons for making an appeal in the first place. For example, if an appeal is won by the appellant it is, in effect, an admission

that the authority should have granted planning permission when determining the application. The planning authority will have received a fee to determine the application and, especially in cases of appeals against non determination, have not provided the correct service which has been paid for by the applicant. To have to pay again to rectify this situation is inequitable and unfair.

36. One suggestion therefore, might be that, certainly in cases of appeals against non determination, all or part of the planning application fee should be transferred from the authority to the planning inspectorate. It might further be suggested that in all appeals the appeal fee should be paid by the party against whom the appeal decision is made.

Part 10: Community Infrastructure Levy

37. **Clauses 163-172** enable the Secretary of State to establish a Community Infrastructure Levy (CIL) by regulation. The aim of the charge is to ensure that costs incurred in providing infrastructure to support the development of an area are partly met by landowners who have benefitted from the grant of planning permission.

HBF Comment:

38. The introduction of CIL is the latest iteration of previous attempts to capture value from development. The history of its development has been well rehearsed at length in other HBF briefings over the last few years. The clauses in the Bill are enabling clauses with most of the detail of how CIL will be operated in practice being left to secondary legislation through regulations.

39. **Clause 164** specifies which authorities may charge a CIL. These include the Secretary of State, a local planning authority, Welsh Ministers, the Mayor of London and any other authority with planning responsibility (such as English Partnerships and other development agencies).

HBF Comment:

40. Although this clause has caused some concern over the inclusion of the Secretary of State in the list of charging authorities it is not expected that there will be a “national infrastructure” element to any CIL. This reference may well be no more than allowing the Secretary of State to charge CIL when making appeal or other planning decisions. Obviously this issue will need to be carefully controlled through regulation.

41. **Clause 165** establishes the timing as to when the CIL liability is established. The amount of liability is established at the time of granting planning permission. CIL becomes payable on the implementation of the planning permission on which it has been incurred.

HBF Comment:

42. It is considered that this clause is particularly helpful in setting the liability at the time of the grant of planning permission yet linking payment to the implementation. Regulations will be able to set out proposals for staged payments in specified situations.

43. There is, however, a curious anomaly in Clause 165(4) which states that CIL may be required to be paid in respect of land developed "whether or not its value has increased as a result of the grant of planning permission". This seems at odds with the aims of the CIL as set out in Clause 164 and will need to be clarified.

44. **Clause 166** requires regulations to set out methodologies for calculating the amount of CIL

45. **Clause 167** requires authorities who set a CIL to also specify how the Levy collected will be spent.

46. **Clause 168** requires regulations to specify how the CIOL will be collected and allows one authority to collect CIL for another.

47. **Clause 169** sets out the enforcement regime regarding non payment of CIL.

48. **Clause 170** grants power to the Secretary of State to set the level of CIL and to specify what infrastructure CIL will be appropriate to be paid for by CIL. In effect, regulations will set out how authority proposals are to be examined by the Secretary of State through a local inquiry.

49. **Clause 171** is a general clause that binds the introduction of CIL procedures to being made through a statutory instrument that will be laid before Parliament. Essentially this is to allay fears that some MPs have expressed that the introduction of a new development levy has been left to secondary legislation rather than clearly defined in the primary legislation.

50. **Clause 172** states that CIL regulations will also be allowed to specify how S106 of the Town and Country Planning will be applied.

HBF Comment:

51. This final clause of the provisions for CIL is one of the most critical. What is covered by CIL and what will still need to be provided under S106 agreements currently poses considerable debate and challenges.

Part 11: Final Provisions

52. **Clauses 173-178** are specific to how the planning system relates to the Crown

53. **Clauses 179-189** are general legal clauses regarding supplementary provisions as a consequence of the Bill.

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