

Campaign for Planning Sanity

LOCAL COMMUNITY SUPPORT FOR ADVERSE PLANNING & DEVELOPMENT APPLICATIONS

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Developments Affected by EMF Emissions A Precautionary Approach to Planning Decisions

1. This briefing paper sets out a potential precautionary approach to planning and development decision's and procedures. It is assumed within this paper that the concerns requiring the implementation of precaution is based upon perception of an adverse health effect as opposed to that of a provable effect, although in reality some concerns may indeed be provable fact.
2. The big problem is that the Government do not in most cases accept the real concerns of the public of the potential risks. This leads to mistrust of the system, particularly, as is often the case when local decision makers follow too rigidly the little advice that is issued. If the public are to have confidence in the system, then they have to know that their concerns are genuinely being taken into account. This means a policy structure where the public are involved from the outset and that they have the ability to participate at every stage of the process. It does not mean that simply because a concern is raised that the development should be halted. Often if developers and planners listen hard enough they find that simple measures can be put in place that alleviates local concerns. On other occasions the concerns of the public will raise issues that had not been brought forward previously, or had not been considered to be an issue, and therefore it can be demonstrated that the site in question is inappropriate.
3. The courts have found on numerous occasions that health concerns of the public to development projects are a material planning consideration, the leading case being that of Newport¹, where it was set out that the public did not need any scientific evidence to support their fears or concerns. Whereas in some other cases, notably those connected to telecommunication developments there have been some conflicting decisions. In the Susan Trevett (*unreported*) case it was found that insufficient evidence of a health threat had been put to the Planning Inspector to enable sufficient weight to be given to the Claimants health concerns that would warrant rejection of the development on that ground. But that an ICNIRP compliant Certificate was not sufficient grounds for reducing the obligation of the decision maker to fully take health into account. In Jodie Phillips² the court found that where there were two potential sites one close to sensitive locations such as schools and residential property and the other was not then that may be a ground for refusing the application. And in Jane Lee³ it was found that where an objector had raised concerns that she lived within the Beam of Greatest Intensity this would heighten her concerns, and that was a ground that might give rise to being considered one of the principle reasons (*i.e. To be decided*).
4. Within planning procedures generally and 'transcable' developments specifically there is the ability for health concerns to be given appropriate weight by the planning decision maker, and where the development project is to have a substantial effect on the human and natural environment then by consideration of an environmental statement submitted by the developers and representation by third parties based on that statement. There is then already in place the potential process to ensure that appropriate action is taken to reduce developments that are going to be effected by existing infrastructure that has a perceived health risk. As well as the actual infrastructure projects themselves. All that is required to ensure that they are appropriately applied is the political will, through the issuing of appropriate guidance.
5. Our primary suggestion is that the process can be governed either by the introduction of Regulations, which can if they are put out to appropriate consultation take a considerable time before they are introduced from the time of conception. Or as an alternative by the issuing of a new Planning Policy Statement (PPS), which would be far more wide ranging and flexible than regulations. It is therefore this option that Planning Sanity put forward as the potential best route forward. Planning Sanity would like this new PPG to include consideration of all developments that have potential health related concerns, such as incinerators, land fill, phone masts and chemical plants etc.

¹<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/1997/1894.html>

²<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2003/2415.html>

³<http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWCA/Civ/2004/1612.html>

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6. A further consideration as to why we consider that a PPG would be more appropriate than Regulations is the wording, PPGs/PPSs can be written in plain English (*although if PPG8⁴ was taken as the test this might not be seen to be the case, which has some very confusing language*) as opposed to the more formal nature of regulations, which gives a distinct benefit to none professional third parties, such as members of the public. PPG14⁵ (*Development on Unstable Land*) being an example of a PPG that deals with a similar topic in a thorough way, including the ability to ensure that a stability report is produced and taken into account. Paragraph 31 of PPG14 sets out:-

31. The handling of individual applications for development on land which is known or suspected to be unstable or potentially unstable will need to take account of the potential hazard that such instability could create both to the development itself and to the neighbouring area. Whilst there is scope for flexibility and each application must be treated on its merits, it is important that a local planning authority should be satisfied by the developer that any instability has been taken into account.

7. PPG14 sets out that the developer should employ the appropriate degree of expertise, and that information would clearly then be set out in the report they submit to the LPA, who are then able to appraise the situation with not only the comments of the developers experts, but also by their own in house expertise and the comments by third parties. Whilst we are not putting the case that PPG 14 is some marvel of Government Guidance, as it clearly has its faults, nevertheless it is on the road to going some way towards meeting our own criteria. First in setting out a process that whilst not being as binding as Regulations, cannot be ignored by the planning decision maker, yet is comprehensive in dealing with in that case how a developer and the planning decision maker should deal with unstable land.
8. Of course the word of caution always comes with PPGs in that they are only guidance and are not binding, but in my submission that makes them often better for dealing with the unforeseen as they are flexible enough to be adapted to meet the circumstances of any given case.
9. The Precautionary Principle in relation to planning decision making was raised in the Governments '*This Common Inheritance*' which sets out that the planning system should assist in ensuring that proper precautions are taken against the risks that might be posed by physical hazards. It follows that a similar approach, particularly after consideration of the various court cases, should be applied to none physical hazards. Based on that assumption the following is a broad outline of what might be included in a PPG on perceived health risks.
- **A list of potential hazards;**
 - **A scalable list of developments types that might be deemed to be affected by existing or proposed infrastructure and/or development that could be perceived as being a health risk;**
 - **A process for the submission by the developer of an adequate report, with the ability of third parties to comment on the report. With the final decision on the development proposal not being taken until the decision-maker has first taken that report and the submissions made on it into account;**
 - **The role of the local community within the planning decision making process, as well as any pre-application discussions/consultations;**
 - **A requirement that certain statutory and none statutory bodies must be consulted on all applications within the set down criteria;**
 - **A description of the various potential hazards, including where further information can be obtained ;**
 - **Indications of potential mitigation measures for various development and hazard types;**
 - **The effects of the cumulation of the proposed development/hazard with existing developments/hazards;**
 - **Processes and procedures to be adopted when considering the revocation of existing permissions, or the discontinuance of use of existing developments (*Section 97 and S102 T&CPA 1990*), when those developments are likely to be affected by existing or proposed health risk developments;**

This is only intended as a very brief listing of potential content of the proposed PPS, and is not intended as some definitive list.

10. We already have the concept of a precautionary approach mapped out in at least two PPGs that of PPG25⁶ being the most recent and comprehensive, it is worth setting this out in full to understand that the planning system in England and Wales has a two tier approach to concerns on health from developments, with flooding which can be real and dramatic when it hits the headlines of the national media, there is naturally public outcry with many ministerial statements that action is being taken to effect change, yet with the unseen consequences of effects caused by EMF

⁴ <http://www.odpm.gov.uk/index.asp?id=1143963>

⁵ <http://www.odpm.gov.uk/index.asp?id=1144025>

⁶ <http://www.odpm.gov.uk/index.asp?id=1144113>

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and incineration because the effects do not give dramatic pictures the consequences are hidden and therefore less calls for action, and therefore less political will to effect change.

PPG 25 paras 13 and 14 - The precautionary principle

13. "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." This precautionary principle, stated in the Rio Declaration in 1992, is particularly relevant to dealing with the hazard of flooding. Its application acknowledges the uncertainty inherent in flood estimation and, by proceeding from the known facts and taking a precautionary approach to uncertainties, enables more open and better-informed decisions to be made. This can reduce the environmental impact and improve the safety of people and property, despite the existence of risk that may change with time. For example, shoreline management plans aim to identify sustainable approaches to reducing risks over the next 50 years, as well as looking at the longer-term implications. Similarly, guidance on project appraisal for flood and coastal defence includes allowances for sea-level rise and recommendations for sensitivity testing in the design of river defences. In accordance with the precautionary principle, local planning authorities should, therefore, follow the sequential approach set out in paragraph 30 and Table 1. When preparing development plans and considering applications for planning permission, they should consult and take into account advice from the Environment Agency, which should incorporate the latest information on climate change.

14. The Governments strategy for sustainable development makes it necessary to consider the forms of development that would be inappropriate in areas of flood risk. While there remain uncertainties, the importance of acting on a precautionary basis in relation to development and flood risk has increased in recent years by:

- the growth in knowledge of the likely impacts of climate change and their effect on flood risk over time;*
- more sustainable alternatives to conventional drainage systems, which can assist in reducing downstream flooding;*
- advances in management planning in relation to both river catchments and coastal cells.*

11. It follows from this that a precedent exists for the incorporation of a precautionary approach within government guidance, and therefore within the planning process. That being so little argument exists to incorporate the concept throughout all forms of development where there is a potential risk of harm.
12. If the approach set out here was adopted then it would be feasible to put in place a draft PPS in a considerably shorter period than any other potential procedure. I would therefore suggest that whilst working towards producing a comprehensive report on the potential hazards from high powered cables, as justification for a precautionary approach to new developments affected by the perceived danger.

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