

Friends of the Earth England, Wales and Northern Ireland

5th meeting of the Task Force on Public Participation in Decision-Making

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Challenges and obstacles to public participation

Within the last five years in England, Wales and Northern Ireland there continues to be changes that impact upon the rules and practices for public participation in environmental decision-making, generally creating a situation that is more complex, more market-led, and both more costly and less effective in terms of public participation for the public.

England has implemented a series of policy and legislative changes which effectively create a complex multi-option system for developers to gain consent for development for both minor and major applications. This complexity reduces accessibility for those wishing to participate in environmental decision-making in relation to planning. Some matters have been completely removed from the planning system, and therefore removed from the sphere of public participation entirely – for instance the need to apply for permission to change the use of buildings from employment to residential has become ‘permitted development’. Changes to development consent orders can be made more easily (and therefore the public both have to commit more time to responding, and also the conditions set through the original process can be undermined or removed in this way which devalues their original input). In addition changes such as the issuing of ‘standard’ pollution permits without consultation, the ability for existing consents to be changed (in order to remove obligations to increase profitability and therefore viability) has undermined the value set upon public participation inputs.

The application of EIA has been reduced in relation to housing development and industrial estate development as screening has changed to only apply to developments of over 5 hectares, alongside other changes. This will lead to many fewer projects being screened and subject consequently to EIA information, publicity and consultation requirements.

Policy changes have undermined the plan-led system, to the extent that decisions are increasingly made with regard to broad national policy in favour of development and ‘viability’ and are therefore not as governed by local plans.

In addition national planning policy is not being consulted on, and changes to planning legislation are often accompanied by consultation rather than being preceded by consultation (Growth and Infrastructure Act 2013, Infrastructure Bill 2014-15).

The cost of being involved is rising at the same time as becoming less effective. For instance developers are continuing to request deferrals on planning applications in order to overcome planning objections, but this means that the communities who are participating in the process have to attend new additional meetings, and submit further information on usually increasingly narrow points which is costly both in terms of time and funds.

Wales has continued to consult on planning policy and to consult on other national policies affecting the environment, but is in the process of centralising its planning system. In a country of 3 million people it proposes to have 3 or 4 tiers of plans – and to include business representatives formally in a new tier of regional planning. It is also introducing similar legislative changes that have been seen in England – new rules for deciding ‘nationally

significant development' by the Planning Inspectorate/Minister combination rather than the local democratically elected members of local government, and the ability for developers to bypass local authorities that have been penalised for not making decisions within a specific timeframe.

In our view marginalised groups throughout England, Wales and Northern Ireland are struggling to engage positively with the planning system, as it is being used e.g. in England to prevent traveller sites being approved. In addition local plan inquiries which with its right to be heard, and influence over the development of the local area, is being dominated mainly by housebuilding interests who are arguing over sites, rather than more visionary community-led proposals.

A particular case has arisen with regard to the Secretary of State for Communities and Local Government in that a judge in a court case has upheld challenges based on breaches of the Equality Act 2010 and of Article 6 of the European Convention on Human Rights in relation to traveller sites in land designated as green belt and the delay with which they were dealt with.

In NI, planning powers will be devolved from 1 April 2015 to local authorities for the first time in thirty years. Inexperienced decision makers and a divided political culture without a shared narrative will create unique challenges. The plan led system has not yet been introduced and no new local plan has been started for ten years. New legislation does exist for community consultations and community planning is being introduced for the first time although the relationship with statutory planning is not widely understood.

Recent research from Dr Ciara Brennan and a significant number of complaints to Europe in relation to breaches of the EIA, SEA and Habitats Directive and point to a culture of systemic failure in the implementation of these pivotal directives. Without third party rights of appeal in the planning system and increasing costs in judicial review (and a cross cap introduced which means one may not be able to afford to win) means opportunities for redress are prohibitively expensive. Recent examples, such as the Goirtin gold mine, unlawful quarrying in sensitive sites, proposals for the Derry and Belfast incinerators and extensive illegal waste dumping suggest public participation and information needs significant improvement to respond to poor environmental regulation.

Good practice in public participation

Neighbourhood Planning as introduced in England has provided some very positive examples of communities coming together to plan for their area. Broadly, they have been most successful in rural areas, while in urban areas there have been various issues. In addition there has been conflict between the drive for development and growth set out in national planning policy in England, and the different priorities for communities, which is sometimes more conservation oriented. There is an uneven distribution of neighbourhood forums and plans – particularly as it relies on voluntary time and limited funding, and that where parish councils exist there are no neighbourhood forums. There is no guarantee that forums will be inclusive, representative and accountable – as they are formed from people who group together and apply to the local authority for recognition – however as Neighbourhood planning becomes more widespread, best practice is emerging.