

## **Aarhus Convention**

### **Task Force on Public Participation: 23-24 February 2015**

#### **Statement by the United Kingdom**

9 February 2015

In response to the secretariat's request to submit material to share with participants at the Task Force on Public Participation, the United Kingdom sets out the following information.

#### **Public participation in decision-making**

The land use planning system in the United Kingdom is one of the principal means by which public participation in decisions relating to the environment takes place, and is the main focus of this statement.

However, it should be noted that there is a wide variety of other opportunities for public involvement in environmental decisions relating to particular sectors or geographical areas, such as the preparation of shoreline management plans (for addressing coastal change and adaptation) and marine plans (for managing change in the marine environment).

Opportunities for public participation modelled on the Convention are also provided in respect of environmental consents, including, for example, in respect of restrictions for nitrate vulnerable zones and the grant or variation of environmental permits.

There is also a specific regime for considering nationally significant infrastructure proposals, brief details of which are provided at the end of this statement (and which is particularly relevant for major projects that invoke issues relating to climate change).

#### **Land use planning and public participation in the United Kingdom**

The land use planning system in the United Kingdom offers extensive opportunities for public participation, but also demonstrates some of the practical challenges that exist in implementing such frameworks and securing effective public engagement.

The system operates principally through the preparation of indicative, but statutory, spatial plans and through decisions on individual applications to carry out development.

These spatial plans are not binding on those preparing or deciding applications for development, but instead form a broad policy framework within which decisions on individual proposals are made. By law, statutory plans are the first and most important consideration when deciding applications, but the decision-maker must

also take into account any other relevant (“material”) considerations relating to the use and development of land.

The scales at which statutory plans are produced, and the number of tiers of plan-making, varies across the United Kingdom’s administrations, but in all cases the production process is designed around the need for effective public engagement and transparent testing of the evidence and proposals.

For example, in England the principal form of statutory plan is the Local Plan prepared in most cases by district, borough and city councils. The Local Plan provides a long-term framework - over around a 20 year period - for the use and development of land in the area. Most Local Plans contain a mixture of general policies for considering different types of development and proposals for specific areas of land.

There are prescribed procedures for preparing Local Plans, which must as a minimum involve publishing, publicising and consulting on draft proposals; a period of further consultation once the final draft plan has been prepared; and, in virtually all cases, an independent examination. There are associated procedures for publicising and inviting views on a strategic environmental assessment of the proposals in the Local Plan. Many councils do more than the statutory minimum, with additional periods of consultation at the early stages of Local Plan production being common.

The process for considering individual applications for development is similar across the United Kingdom’s administrations. When major development is proposed, it is common for developers to consult the community potentially affected, as well as the council for the area concerned, to help identify issues that may need to be addressed before any formal planning application is made. While most pre-application discussions of this sort are generally non-statutory, they are encouraged through national policy and guidance. In some of the devolved administrations, consultation requirements go further, for example in Scotland pre-application consultations for major and national developments require consultation with every community council within or adjoining the land where development is proposed, and at least one public event must be advertised and held in the locality.

When an application is formally submitted, there are statutory requirements setting out minimum levels of publicity, which will at the very least involve site notices, notification of adjoining owners and occupiers, and the publication of details on the council’s website for a 14 day period during which anyone with an interest may submit their views. In the case of major schemes (or those requiring Environmental Impact Assessment) additional minimum requirements apply, such as publicity through newspaper advertisements. Many authorities also contact the occupiers of properties around the application site to ensure that they are aware of the proposals and the opportunity to comment.

Decisions on major or controversial applications are usually taken by elected council members at a meeting held in public, at which most councils allow members of the public to speak, if they have made comments during the consultation period. Less complex decisions are usually delegated to officials within the council, but in all cases those making the decision must take into account any comments received

during the consultation period, provided they raise issues that are relevant to the application concerned.

### **Public participation in environmental permits**

In England and Wales, the environmental permitting regime covers the consenting of a wide range of regulated activities with an impact on the environment. This includes industrial facilities, waste operations and water discharges.

Public participation provisions – including requirements to inform public consultees of applications shortly after receiving them and a duty on the regulator to consider representations – apply in respect of applications for environmental permits and applications for variation entailing a substantial change.

The regulator is also required to publish a public participation statement setting out its policies for complying with its public participation duties. This statement must be kept under review. The Environment Agency – which regulates a number of permitted activities in England – has published its public participation statement at: <https://www.gov.uk/government/publications/environmental-permitting-public-participation-statement>.

### **Dealing with Nationally Significant Infrastructure projects**

In 2008 a new process was introduced for deciding whether to permit nationally significant infrastructure projects in England and Wales. Its aim was to simplify the process by reducing the number of separate permits required, to speed up decision times through statutory timeframes for decisions, and to enable public involvement throughout the process.

A series of National Policy Statements provide the framework for decisions, which are subject to public consultation and publicity requirements, and consideration by Parliament. They set out government policy on the need for certain types of infrastructure and issues that applications for specific projects will need to address. They are central to decision making on nationally significant infrastructure projects; where a national policy statement has effect in respect of a project the decision must be made in accordance with that statement unless one of a range of exceptions applies.

Promoters of specific projects are required to carry out extensive consultation prior to submitting an application to the Planning Inspectorate (a government agency) for examination. They must also work with the relevant local council(s) on a Statement of Community Consultation which sets out how they will consult people living in the vicinity of the scheme. A detailed consultation report must be submitted with an application demonstrating that these extensive consultation requirements have been complied with.

Once the application has been accepted, there are prescribed notification requirements, and the application must be publicised in national and local newspapers. Site notices are also required. There is an examination of the application by an Examining authority, in which any interested parties (along with the

applicant, other statutory parties, and local authorities) will play a role. The examination takes the form of consideration of written representations about the application, and there are provisions providing for an interested party to make their representations in person at a hearing during the examination. The Examining body must make a report to the relevant Secretary of State as to whether or not the development should be approved. The Inspectors' report will, among other matters, say how public views have been taken into account..

There are analogous arrangements in the devolved administrations. For example, in Scotland the National Planning Framework identifies and consults the public on designated 'national developments' and these are subjected to more stringent consultation requirements at the development management stage, as referred to above.

### **Challenges and innovative practices in public engagement**

Although extensive opportunities exist for public involvement through the planning system in the United Kingdom, there are certain challenges in ensuring that this works effectively. To a significant extent these are challenges that face all systems of making environmental decisions - they are not unique to the United Kingdom:

First, where development is proposed, the physical impacts tend to be concentrated within a limited geographic area, whereas the potential beneficiaries of the development often exist across a much wider area (e.g. the occupants of new homes, or the people whose waste would be processed at a new recycling facility). Those immediately affected by a proposal - and who might experience some negative impacts from the development - have a greater incentive to express their views than those living further away who might benefit from the proposal.

This creates a natural tendency towards imbalance in those who participate in decision making processes, and the views that are expressed. In England the Government has sought to counteract this imbalance by promoting the need for certain forms of development nationally (in particular new housing, where there is a particular shortage, and through the Nationally Significant Infrastructure regime); and by introducing neighbourhood planning to engage communities more effectively in choices about the future of their areas (more details about neighbourhood planning are provided below).

Second, some population groups find it harder to engage in public participation opportunities than others, such as those who do not have access to digital media or those with caring responsibilities or other duties that limit their time to get involved. Many councils go to great lengths to identify ways of engaging with groups that would otherwise be under-represented. In England, the Government has carried out a radical reduction in the volume of national planning policy and guidance, all of which has been re-written to improve its clarity and accessibility for different groups.

Third, 'consultation fatigue' - an increasing reluctance for people to get involved where particular decision-making processes are drawn-out and involve multiple stages of engagement - can be a barrier in some cases. This can be a particular challenge during plan-making, which - if views are properly to be taken into account -

is inevitably a multi-stage process covering a range of subjects. In the United Kingdom efforts have been made to streamline procedures as much as possible, while retaining adequate opportunities for effective public involvement.

### **Neighbourhood planning**

This is a particular innovation which gives people greater ownership of plans and policies that affect their local area, and which has facilitated better public engagement at limited cost to public authorities. Neighbourhood planning was introduced in England by the Localism Act 2011, and gives local communities direct power to develop and implement a shared vision for their areas. This is done through a new right to prepare a statutory plan for their area, as well as the ability to grant permission for specified developments or types of development through a 'neighbourhood development order'.

Since neighbourhood planning was introduced there has been a growing momentum behind it. Over 1,300 communities have begun the process, and the first neighbourhood plans are now in place. Because neighbourhood planning takes place at a very local level, and is led by parish councils or voluntary groups, it is often easier than with other forms of planning to publicise ideas among local people and secure widespread public involvement. An important requirement is for all neighbourhood plans and neighbourhood development orders to be approved by a local referendum: in the referendums held to date the average approval rate has been 87%, with an average turnout of 33% of the public entitled to vote.

Neighbourhood plans and orders are subject to a number of safeguards before they can be put to a referendum: there must be a period of publicity and consultation with the wider community and others before a referendum; they must fit with relevant national and local strategic policies (as set out in the Local Plan for the area); they must comply with some key legal tests (including those relating to strategic environmental assessment); and they must be subject to an independent examination (to which representations can be submitted for consideration) before a vote is held.