DURHAM BRANCH OF THE CAMPAIGN TO PROTECT RURAL ENGLAND

COMMENTS ON THE RESPONSE OF THE BWEA TO OUR ENERGY CHALLENGE

Durham Branch of the Campaign to Protect Rural England (DCPRE) has already made a number of submissions to the UK Government Energy Review. It has not commented on Planning Procedure issues as it considered these were not strictly relevant to the Review. It has however noted the comments on page 23 of the BWEA's response and feels obliged, if these are considered to be relevant to the remit of this Review, to make some comment.

BWEA list four points it asks the Government to employ. Briefly, these are

1) awarding costs to developers
2) introducing a range of targets for the decision making process
3) publish lists as to how LPAs perform
4) giving developers a right to a public inquiry in Section 36 cases

DCPRE now notes the contents of Annexe D of the Energy Review and is most concerned about the contents in particular of the third paragraph.

DCPRE would wish to comment as follows

1) In DCPRE's view, if this were agreed it amounts to blackmail. It would impose a tremendous burden upon LPAs who have to perform a balancing act, taking into account a host of issues including the views of persons affected by such proposals and relevant bodies. There may be many reasons why such applications cannot be determined within time, which can of course include defective applications by developers. DCPRE would be vehemently opposed to such a move.
   Of course, if an application is not determined within the time, it is a deemed refusal, which does give the developer an automatic right of appeal. It is a matter for the developer whether it wishes or not to exercise its right of appeal immediately after the 16 week period which may save it costs
2) The problem with targets such as these is that while a LPA focuses attention on the type of application in question, it may well pay less attention to other types of application if there is no such target to protect them. There are many examples now where this is evident, eg some of the recent debacles highlighted in deficiencies in the Home Office concentrating on tackling immigration issues and as a result letting slip deportation issues. Prioritising as mentioned here could lead to distinct problems for other applicants, who may consider their applications are just as important as any submitted for renewable energy.
3) Lists of this type can be wholly misleading. A LPA may perform well on the list, but only because it has not considered all issues in reaching its decision. Conversely, a LPA may perform badly on the list but only because it has carried out its consultation duties responsibly and is properly taking into

account all issues raised. In addition, should a LPA be penalised for not reaching decisions on time if applications are defective? Or should the decision always be to refuse in such circumstances, in order to meet targets?

4) Section 36 applications raise a number of issues. There is a perception that these can never be fair as the lead department interested in electricity generation (DTI) is itself the determining body. DCPRE has considered this from a Human Rights point of view and considers there are problems but notes the overriding power of the Courts to correct any wrongful decision – see Adlard v Secretary of State.

   DCPRE of course considers all sides should have a right to have their views heard by a properly constituted tribunal – and this includes third parties affected by proposals who at present have no right to require an inquiry into any planning application, however badly an approval may affect them.

   DCPRE is puzzled by BWEA's reference to Section 6 Human Rights Act 1998 for the following reasons

   a) Notwithstanding the comment above about tribunals, the HRA is concerned with individual rights etc, not corporate rights. With respect, HRA does not apply to BWEA or any company it represents
   b) Section 6 deals with acts of public bodies. It is assumed that BWEA intend to refer to Article 6 of the European Convention on Human Rights (right to a fair trial). Notwithstanding the above, DCPRE does not oppose this principle, provided it includes a fair hearing for all persons, including third parties who may be adversely affected by such proposals.

      In this respect, DCPRE would draw attention to an assessment of potential Human Rights issues in planning matters as outlined on www.communigate.co.uk/ne/bowburnaction (Human Rights page), which, it believes, presents a balanced view of the issues

So far as Annexe D is concerned, DCPRE is most concerned that this appears to be putting the rights of the community at large disproportionately over the rights of the individual. Many renewable energy projects, particularly for projects such as wind energy, are likely to be proposed in areas of little inhabitation. The comments of the third paragraph seem to disregard their interests in a way which may well not be compatible with Article 8 of the European Convention on Human Rights. The comments also appear to be inconsistent with comments made in Dennis v MoD, where the rights of the individual vis a vis the community at large were specifically considered.

Of course DCPRE recognises benefits that may arise from reducing emissions of carbon dioxide and other greenhouse gases. The issue here is not whether renewable energy projects do have this effect (that has been discussed elsewhere), but whether, as appears to be suggested in paragraph 3 of Annexe D, the wider community, with no loss to itself, can impose this sort of burden upon individuals or small communities who may feel unable to defend themselves and their property.

In conclusion, DCPRE had not considered that this issue is relevant to the Review. However, in view of the comments of BWEA on this point coupled with the contents of Annexe D, DCPRE does consider it appropriate to make these further comments