

Growth and Infrastructure Bill

Report by Chief Executive and Director of Planning and Strategy

Summary: The Growth and Infrastructure Bill has important implications for National Parks and the Broads. This report looks at one particular section which would remove the duty, when exercising functions in relation to the Communications Act, for public authorities to have regard to:

- (a) conserving and enhancing the natural beauty, wildlife and cultural heritage of the Broads;
- (b) promoting opportunities for the understanding and enjoyment of the special qualities of the Broads by the public; and
- (c) protecting the interests of navigation.

Recommendation:

To endorse the approach taken by National Parks England as supported by the Chairman of the Authority in highlighting the positive work by national park authorities in encouraging rural broadband and the speed with which the national park authorities have dealt with planning applications for telecommunications facilities and expressing concern about the proposed amendment to the Norfolk and Suffolk Broads Act.

1 Background

1.1 The Growth and Infrastructure Bill had its First Reading in the House of Commons on 18 October, 2nd Reading on 5 November and now moves into the Committee stage. The Government's Background Paper states:

The new Growth and Infrastructure Bill will help the country compete on the global stage by setting out a comprehensive series of practical reforms to reduce confusing and overlapping red tape that delays and discourages business investment, regeneration and job creation.

The Bill will enable the country to create more of the homes and jobs that people aspire to faster whilst keeping important protections and safeguards in place. It will remove rigid process and unnecessary paperwork bringing important benefits to the economy and provide greater certainty to local firms and local communities.

1.2 The Bill contains the following Clause in Section 7:

7 Electronic communications code: the need to promote growth

(1) In section 109(2) of the Communications Act 2003 (matters to which Secretary of State must have regard when making regulations about conditions and restrictions on application of electronic communications code), after paragraph

(b) insert—

“(ba) the need to promote economic growth in the United Kingdom;”

(2) In section 11A of the National Parks and Access to the Countryside Act 1949 (public authorities’ duty to have regard to conserving beauty etc of National Parks when exercising functions in relation to them), after subsection

(2) insert—

“(2A) Subsection (2) does not apply to the exercise by the Secretary of State of the power to make regulations under section 109 of the Communications Act 2003 (conditions and restrictions on application of electronic communications code) if—

(a) the power is exercised before 6 April 2018, and

(b) the resulting regulations are expressed to cease to have effect (other than for transitional purposes) before that date.”

(4) In section 17A of the Norfolk and Suffolk Broads Act 1988 (public authorities’ duty to have regard to conserving beauty etc of the Broads when exercising functions in relation to them), after subsection (1) insert—

“(1A) Subsection (1) does not apply to the exercise by the Secretary of State of the power to make regulations under section 109 of the Communications Act 2003 (conditions and restrictions on application of electronic communications code) if—

(a) the power is exercised before 6 April 2018, and

(b) the resulting regulations are expressed to cease to have effect (other than for transitional purposes) before that date.”

1.3 The full text for Section 17A in the Norfolk and Suffolk Broads Act is:

17A General duty of public bodies etc.

(1) In exercising or performing any functions in relation to, or so as to affect, land in the Broads, a relevant authority shall have regard to the purposes of—

(a) conserving and enhancing the natural beauty of the Broads;

(b) promoting the enjoyment of the Broads by the public; and

(c) protecting the interests of navigation.

(2) The following are relevant authorities for the purposes of this section—

(a) any Minister of the Crown,

(b) any public body,

(c) any statutory undertaker,

(d) any person holding public office.

(3) In subsection (2)—

“public body” includes

- (a) a county council, district council or parish council;
- (b) a joint planning board within the meaning of section 2 of the Town and Country Planning Act 1990;
- (c) a joint committee appointed under section 102(1)(b) of the Local Government Act 1972;

“public office” means—

- (a) an office under Her Majesty;
- (b) an office created or continued in existence by a public general Act; or
- (c) an office the remuneration in respect of which is paid out of money provided by Parliament.]

- 1.4 Section 11A was inserted into the National Parks legislation by Section 62 of the 1995 Environment Act and at the time was seen as an important form of additional protection for the parks. The parallel clause, Section 17A was inserted into the Broads legislation by the Countryside and Rights of Way Act in 2000.
- 1.5 The reason behind this suggested “temporary” relaxation of the duty to have regard has come directly from a concern expressed by the mobile phone companies and associated infrastructure providers that the delivery of broadband to rural areas together with attempts to improve mobile phone coverage in rural area (e.g. addressing “not spots”) was being hampered with the potential to increase costs.
- 1.6 In recent years changes have been made to national planning legislation and regulation to change permitted development rights and to reduce the need for applications for certain size masts or other associated equipment – not just in the telecommunications sector but also in relation to small scale domestic renewable energy.
- 1.7 However larger scale schemes do still require the benefit of planning permission and a perception remains that national park purposes had been used as a reason by local communities to oppose proposals or by planning authorities to refuse them.
- 1.8 The English National Park Authorities Association (ENPAA), in future to be known as National Parks England, has recently collected information from a number of national park authorities in respect of the number of such applications received and the number of such applications refused. While the picture is mixed, across the parks as a whole the evidence is largely positive. The NorthYorkshire Moors, for example, has received 16 full applications and approved them all and received 16 notifications and approved 93%. Overall, there is very little evidence to demonstrate that the protection offered by the duties falling on National Park Authorities has prevented the implementation

of broadband schemes, and some of the Parks (for example the Lake District National Park Authority) are in the lead locally in pressing for the early and comprehensive roll out of broadband connections within their area.

- 1.9 In a Broads' context, since 2007, the Authority has had eight telecommunications notifications which all fell into the "prior approval" category and all were determined positively within the required timescales.
- 1.10 The Chairs of the English national parks, including the Chairman of the Broads Authority, have expressed their concerns about the proposed amendments to the legislation and it has been agreed that a delegation made up of a Chair, a Chief Executive and a Chief Planning Officer from different parks will give evidence to the Commons Committee considering the Bill on the extent to which all the Parks and the Broads are able to deliver support to the mobile phone providers and infrastructure companies while continuing to exercise our primary duties.
- 1.11 From a Broads' perspective there is no evidence that the extension of broadband is being delayed by the planning system, and the Authority is entirely supportive of the initiatives by Norfolk and Suffolk County Councils to extend broadband to rural parts of the two counties. This would be of benefit to local people, to visitors, and of course to the Authority's own operations.
- 1.12 Business Minister Mr Fallon MP also tried to reassure MPs on 5 November that moves to streamline the planning regime for the deployment of new broadband equipment would not give carte blanche to developers. He said: *"The intention of the Bill is to allow cheaper and quicker deployment of broadband street cabinets and overhead infrastructure, not mobile phone masts. Let me reassure those who have concerns about the possible impact of this provision on our national parks and other protected areas that, under proposals on which we will shortly be consulting, providers will still have to notify local authorities of their plans."*

2 Conclusion

- 2.1 This is an important point of principle at stake for the parks and the Broads in the proposed temporary amendment to the legislation and it is useful that National Parks England is covering this issue for the family as a whole. It would be helpful for members to review and consider their support for the proposed actions to be taken by the English Park Authorities, which have up until now been endorsed by the Authority's Chairman.

Background papers: Growth and Infrastructure Bill

Author: John Packman, Andrea Long
Date of report: 12/11/2012

Appendices: None