

Cost Benefit Analysis of for Subordinate Legislation Proposed by Gareth Jones AM

Introduction

Gareth Jones AM tabled a No-Named Day Motion on 22 March 2002 that instructs the Minister for Environment, Planning and Transport to bring forward draft subordinate legislation to amend the Town and Country Planning (General Development Procedure) Order 1995. This accompanying document provides an assessment of the costs and benefits of implementing this motion.

A Objective

The objective to be achieved by this order is to ensure that Health Authorities and other appropriate Health Bodies are statutory consultees to Planning Authorities for proposals to build schools on contaminated or potentially contaminated land.

B Context

The Welsh Assembly Government has asserted that its planning policies “contribute to the...health, well-being and quality of life of individuals and communities.”(Planning Policy Wales, 2002) Planning decisions need to be made on the basis of the best and most robust available information. It is crucial that such information is based on advice that is independent and makes use of the relevant expertise.

Indeed, current planning guidelines stipulate the need for adequate information in relation to the decision-making process of all planning applications. However, there are no statutory obligations on Planning Authorities to obtain information from Health Authorities or other health bodies for applications to build on contaminated land at any given stage in the planning process.

Current Situation

Planning Decisions

Under Planning Policy Wales planning applications or the renewal of planning permission should be determined in accordance with the Unitary Development Plan unless material considerations indicate otherwise. Section 13.6 of Planning Policy Wales stipulates in developing UDPs, “local planning authorities should take into account the nature, scale and extent of contamination which may pose risks to health. Land contamination must be considered in the preparation of UDPs to ensure that new development is not undertaken without an understanding of the risks, including those associated with the previous land use, mine and landfill gas emissions and rising groundwater from abandoned mines.”

Material Considerations

Health

Health and public safety are material considerations as in principle are public concerns in relation to such effects.(Planning Policy Wales, Para 4.1.4) Health

Authorities are not statutory consultees in the planning process. Planning Policy Wales states that for Unstable Land and Contaminated Land, the planning system should guide development to lessen the risk from natural or man-made hazards, including risk from contaminated land. Hence, the basis of such guidance is not derived from a duty to obtain relevant health information from the appropriate Health Authority.

C Options and Assessment of Benefits

Options

Option 1:

To rely on existing planning policy guidelines for present and future planning applications for building schools on contaminated land. This is referred to as the “do nothing” option.

Option 2:

To require that Health authorities and other health bodies become statutory consultees to planning authorities for proposals to build schools on contaminated or potentially contaminated land. This would require amendment of the Town and Country Planning (General Development Procedure) Order 1995.

Benefits (Option 2)

- ◆ Ensure that decisions made on planning applications are made on the basis of comprehensive, independent information pertaining to health risks involved (especially for children)
- ◆ Improve openness, transparency within the planning process.
- ◆ Improve public awareness of environmental matters as required by European Directive and consequent UK law.
- ◆ Mitigate possible long- term developmental health implications for children.

D Assessment of Costs

COST CATEGORY	OPTION 1	OPTION 2
(annual costs except where stated)	Do nothing/do minimum.	Draft subordinate legislation under standing order 29.2 to amend the Town and Country Planning (General Development Procedure) Order 1995 in order to place a duty on Local Authorities to consult with Health Authorities or other appropriate health bodies when they receive planning applications to build schools on contaminated land.
Direct costs (Costs falling on the Assembly which are directly attributable to the option)		Staff costs approx £15,500 (around 90 days), for consulting on draft legislation and preparing legislation for consideration by the Assembly Translation, printing and publicity costs unquantified but limited, likely to be less than £5,000
Indirect costs (Costs falling on the Assembly which cannot be directly attributed)		Accommodation costs. In-house copying, telephones, lighting etc

Opportunity costs		Plenary Costs – Assembly staff time (incl Legal, Committee Sec, Chamber Sec, ROP, Translation)
Other costs (including costs falling on other bodies and unquantified costs)	<p>Unquantifiable costs associated with possibility that a public Inquiry could be required.</p> <p>Unquantifiable costs of possible remediation costs if school is built on contaminated land and contaminant proves to be harmful.</p> <p>Unquantifiable health costs if school is built on contaminated land and contaminant proves to be harmful.</p> <p>Unquantifiable legal costs if school is built on contaminated land and contaminant proves to be harmful.</p> <p>Unquantifiable costs of public protest (police time, opportunity costs of protesting) due to application to build on contaminated land.</p>	<p>Unquantifiable costs of consultation between Local Authorities and health bodies. Such costs should not be excessive if the legislation is applied only to schools.</p> <p>Unquantifiable costs associated with probability that a public Inquiry might be required. The probability should be reduced relative to option 1 depending on the credibility of the health bodies assessment.</p> <p>Unquantifiable health costs if school is built on contaminated land and contaminant proves to be harmful, assuming the assessment of the health body is not acted upon, or current knowledge is flawed. The probability should be reduced relative to option 1 depending on the validity of the health bodies assessment.</p> <p>Unquantifiable legal costs if school is built on contaminated land and contaminant proves to be harmful. The probability should be reduced relative to option 1 depending on the validity of the health bodies assessment.</p> <p>Unquantifiable costs of public protest (police time, opportunity costs of protesting) due to application to build on contaminated land. The probability should be reduced relative to option 1 depending on the credibility of the health bodies assessment.</p>
Total costs (including unquantified costs)	Unquantifiable other costs.	Approximately £20,500 in direct costs. Unquantifiable indirect, opportunity and other costs.

E Justification of Proposed Option

The motion proposes that the Assembly instructs the Assembly Environment Planning and Transport Minister to bring forward draft subordinate legislation to deliver Option 2 above. In view of the fact that health is a material consideration in the planning process, it is felt this option would formalise in legislation, the need for Planning Authorities to consult with Health Authorities to provide advice on health risks in the specific circumstances where there are proposals to build schools on contaminated land.

F Course of Action

If the motion is approved in Plenary, the Assembly Minister for Environment, Planning and Transport shall bring forward the draft legislation within a period of 3 months from the date of the resolution.