

IN THE MATTER OF THE SOUTH DOWNS NATIONAL PARK AUTHORITY
AND IN THE MATTER OF PARAGRAPH 22 OF PPS7

OPINION

Introduction

1. I am asked to advise the South Downs National Park Authority (“SDNPA”) on the meaning of “major development” as used in paragraph 22 of PPS7.

2. PPS7 states:

“22. Major developments should not take place in these designated areas [National Parks, the Broads, and AONBs], except in exceptional circumstances. This policy includes major development proposals that raise issues of national significance. Because of the serious impact that major developments may have on these areas of natural beauty, and taking account of the recreational opportunities that they provide, applications for all such developments should be subject to the most rigorous examination. Major development proposals should be demonstrated to be in the public interest before being allowed to proceed. Consideration of such applications should therefore include an assessment of:

(i) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;

(ii) the cost of, and scope for, developing elsewhere outside the designated area, or meeting the need for it in some other way; and

(iii) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

23. Planning authorities should ensure that any planning permission granted for major developments in these designated areas should be carried out to high environmental standards through the application of appropriate conditions where necessary.

3. In light of that paragraph, it is important for a National Park Authority (“NPA”) to be able to identify an application for “major development”. However, there is no definition of “major development” in either PPS7 or the government circular on English National Parks and the Broads¹ and there is no case-law I am aware of on the point.

¹ The English National Parks and Broads UK Government Vision and Circular 2010, and which replaces Circular 12/96. This says:

“Major development in or adjacent to the boundary of a Park can have a significant impact on the qualities for which they were designated. Government planning policy towards the Parks is that major development should not take place within a Park except in exceptional circumstances. This is set out in Planning Policy Statement 7: Sustainable Development in Rural Areas and

4. On 1st August 2009 and on 27th April 2010, prior to the SDNPA becoming operational, I advised DEFRA and the SDNPA on the principles that ought to be applied when deciding whether to delegate planning decisions. I advised that decisions on “major development” ought not to be delegated. In so advising, I adopted the definition of “major development” as set out in the Town and Country Planning (General Development Procedure) Order 1995 (“the 1995 Order”), see e.g. the opinion dated 1st August 2009 at para. 27ff.

5. As the SDNPA is now exercising its planning powers, it must adopt a sound and consistent approach to assessing whether an application is for “major development”. Accordingly, I am asked to confirm whether the term “major development” as found in PPS7 has the same meaning as “major development” in the 1995 Order (since replaced in identical terms by the Town and Country Planning (Development Management Procedure)(England) Order 1995/419 (“the 2010 Order”)), or whether it has a different meaning.

Discussion

i) The 2010 Order

6. The only legislative definition of “major development” is found in the Article 2 of the 2010 Order, which provides:

“major development” means development involving any one or more of the following—

- (a) the winning and working of minerals or the use of land for mineral-working deposits;
- (b) waste development;
- (c) the provision of dwellinghouses where —
 - (i) the number of dwellinghouses to be provided is 10 or more; or
 - (ii) the development is to be carried out on a site having an area of 0.5 hectares or more and it is not known whether the development falls within sub-paragraph (c)(i);
- (d) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or
- (e) development carried out on a site having an area of 1 hectare or more”

restated in Minerals Policy Statement 1: Planning and Minerals. Applications for all major developments should be subject to the most rigorous examination and proposals should be demonstrated to be in the public interest before being allowed to proceed. The criteria for the assessment of such applications is currently set out in Paragraph 14 of Minerals Policy Statement 1 and Paragraph 22 of Planning Policy Statement 7. The Government expects all public authorities with responsibility for the regulation of development in the Parks to apply the test rigorously, liaising together to ensure that it is well understood by developers.”

7. The 2010 Order repealed and replaced the Town and Country Planning the 1995 Order”. The definition of “major development” in Article 8(7) of the 1995 Order was identical to the definition in the 2010 Order.
8. There can be no doubt that the definition of the term “major development” in the 2010 Order does not apply directly to its use in paragraph 22 of PPS7. Article 2(1) of the 2010 Order begins: “In this Order, unless the context otherwise requires-” (emphasis added). Accordingly, the definitions in the Order are expressly stated to apply only to the Order itself. Similarly, Article 8(7) of the 1995 Order commenced: “In this Article...” Further PPS7 makes no reference to the definitions contained in the 1995 or 2010 Orders.
9. As such, the term “major development” in PPS7 is not defined in the 2010 Order. But that does not mean that the term ought not to be construed in line with the definition used in that Order.
10. *Prima facie*, there are reasonable grounds for arguing that the term as used in PPS7 ought to be construed in line with its use in the 1995 and 2010 Orders. Those arguments include:
 - (1) First, the writers of PPS7 (published in 2004) can be assumed to have known the definition of “major development” set out in the 1995 Order. That is a definition familiar to most people involved with the planning system. It is unusual that a principle as important as “major development” would go undefined in a national policy document and that may suggest that the drafters of PPS7 thought the definition was clearly defined in the 1995 Order.
 - (2) Secondly, both the 2010 Order and PPS7 use the phrase for a planning purpose, in order to identify development that is of some significance in planning terms. The 1995 and 2010 Orders identify “major development” by its type (eg minerals and waste development) and size (eg buildings over 1000 square metres). That criteria serves the purpose of paragraph 22 of PPS7 in identifying those developments which may have a serious impact on an area of natural beauty.

11. However, there are obvious difficulties with those arguments. Paragraph 22 of PPS7 does not refer to the definition in the 1995 Order. It would have been open to the drafters of PPS7 to have done so. Further, the purpose of identifying major applications in the 1995 and 2010 Orders is different to the purpose of identifying them in PPS7. In PPS7, the purpose of identifying “major development” is to identify that development which may have a serious impact on an area of natural beauty. In the 1995 and 2010 Orders, the provisions referring to “major development” set down stricter requirements for publicity of planning applications (Article 13) and longer time limits for determination of those applications (Article 29). As such, the purpose is to identify those applications that ought to have a more rigorous consultation process, and more careful consideration. While there may be an overlap of the purposes of the two provisions, paragraph 22 of PPS7 and Articles 13 and 29 of the 2010 Order are seeking to identify “major developments” for different reasons.

12. Accordingly, on reflection, I do not consider that the definition of “major development” in the 2010 Order provides a complete answer to the meaning of “major development” in paragraph 22 of PPS7.

ii) The approaches adopted by other NPAs

13. There is a diversity of approach amongst other NPAs, who appear to adopt one of the following different definitions of “major development”:

(i) The definition in the 2010 Order

14. The Peak District is known to adopt the definition in the 2010 Order. Although neither the Local Plan nor the Submission Core Strategy contain any definition of “major development”, instructing solicitors understand that, as a matter of practice, the Peak District NPA applies the definition in the 2010 Order when identifying applications for “major development”.

15. Similarly, the Broads Authority is known to adopt the definition in the 2010 Order. Although the Core Strategy does not contain a definition of “major development”,

instructing solicitors understand that, as a matter of practice, the Broads Authority applies the definition in the 2010 Order when identifying applications for “major development”.

(ii) A different definition based on “adverse impact”

16. Some NPAs have defined “major development” in relation to the adverse impact of the proposed development on the qualities of the National Park.

17. The Lake District Core Strategy defines “major development” as follows (Policy CS12):

“Major development is defined as development which is more than local in character and which has a significant adverse impact on the special qualities of the National Park.”

18. The explanatory text states:

“4.10.2 Examples of major development proposals include road schemes, pipelines, energy supply schemes (conventional, nuclear or large scale renewable), water supply schemes, large scale tourism or leisure schemes, major mineral workings or proposals for major new waste disposal or management facilities (including those for nuclear waste). However, it is not just the major development itself which may impact on the National Park. For example, upgrades to the electricity distribution network or transport network may be required as a result of the proposals for new nuclear power stations or facilities for the disposal of radioactive waste in West Cumbria. Although the facilities themselves may be outside the National Park, these proposals could still have significant environmental effects if the infrastructure associated with them passes through the National Park. We will therefore assess relevant proposals for infrastructure associated with major developments under this policy.”

19. The Exmoor National Park Local Plan does not expressly define “major development”, but also appears to prefer a definition that focuses on the adverse impact of the development proposed. The Local Plan includes the following supporting text in relation to its “major development” policy (Policy LNC20):

“Certain development proposals will have such a significant impact on the landscape, due to their size, nature or traffic implications, that they cannot be accommodated without being in direct conflict with National Park purposes...

...

2.141 The following policy applies to all development proposals which the National Park Authority considers would have such a major or intrusive impact on the landscape, wildlife, cultural heritage, public enjoyment and community of Exmoor as to be incompatible with the statutory National Park purposes. Applications for all such development will be subject to the most rigorous examination.”

20. The Yorkshire Dales Local Plan defines “major development” as follows (supporting text to Policy GP5):

“3.25 Major development is defined as development of more than local significance which will also have a long-term impact on the landscape, wildlife or cultural heritage of the National Park, because of its scale and nature. Examples include proposals for large road schemes, energy-generating schemes, water storage reservoirs etc.”

(iii) A different definition based on possible effects

21. In Wales, the Brecon Beacons Authority has adopted a flexible approach which defines “major development” in relation to its potential to cause adverse effects. In the glossary of terms in the Authority’s LDP 2007 – 2023, it states:

“The National Park Authority is likely to regard the following forms of development as 'Major Development':

- development requiring an Environmental Impact Assessment,
- development not qualifying for an assessment listed above but when assessed against the screening criteria set out under Schedule 3 of the Town and Country Planning (EIA) (England and Wales) Regulations 1999 - SI 1999 No. 293 a significant adverse environmental impact is suspected,
- development justifying the need to submit an appraisal/ assessment of the likely traffic, health, retail implications of the proposal.

Exceptionally, there may be other triggers that necessitate an assessment being carried out. Such an assessment would also need to refer to any associated developments, including access roads and other ancillary buildings. This will be in addition to any assessment required by current legislation, policy or guidance.”

22. As such, the criteria against which development is evaluated by the Brecon Beacons NPA does not depend on the actual impact of the development, but on the fact that the development is of such a scale, character or nature that an assessment of that impact is likely to be required under the planning regime (in the form of EIA, transport, health or retail impact assessments). Therefore, the criteria are concerned with the potential impact of the development rather than the actual impact.

23. Additionally, the approach adopted by the Brecon Beacons NPA is criteria-based but not dictated by criteria. Discretion is still required by the decision maker when deciding whether the development is “major development”.

(iv) Uncertain definition

24. The North York Moors Core Strategy does not provide a definition of “major development”, and instead offers examples of what might qualify as “major development”. It states at para. 5.3:

“There is no precise definition of ‘major development’ but an indication that it includes proposals raising issues of national significance. The guidance indicates that major development should only take place in exceptional circumstances and where it can be shown to be in the public interest. Examples of development that might be classed as major include mineral workings, waste disposal facilities, larger energy generating schemes, water storage reservoirs, high voltage electricity transmission schemes, large scale military development and larger road schemes.”

25. The Dartmoor National Park Core Strategy appears to adopt a hybrid definition, which incorporates some elements of the definition in the 2010 Order, but appears to limit the PPS7 meaning to large scale works for national needs. The Core Strategy states at para. 4.3:

“Major development in National Parks - development that raises issues of national significance - is also addressed by PPS7.”

26. In its Glossary of Terms the Core Strategy states:

Major development

The Department for Communities and Local Government uses the following definition for monitoring purposes:

- for dwellings: 10 or more houses to be constructed (or if the number is not given, the area is more than 0.5ha).

- for all other uses: where the floorspace will be 1000sq m or more (or site is 1ha or more). The area of a site is that directly involved in some aspect of the development. Floorspace is defined as the sum of the floor area within the building.

There is reference to ‘major development’ in PPS7 (Sustainable Development in Rural Areas) and tests to determine the exceptional circumstances within which this form of development will be permitted in National Parks are set out. This type of major development relates to large scale works for national needs, e.g. trunk road schemes, power stations, reservoirs.”

27. The New Forest National Park Core Strategy provides no assistance on the definition of “major development”.

iii) Secretary of State and Inspectorate decisions

28. The definition of “major development” in the context of paragraph 22 of PPS7 has been considered in a number of Secretary of State’s and Inspectorate decisions.

29. In an appeal by Leda Properties Limited in respect of land at Aston Down (APP/C1625/A/07/2055526) (1st December 2009), the Secretary of State agreed with his Inspector’s approach in concluding that a proposed development in an AONB was “major development”. At the inquiry, the Appellants had argued that “major development” was to be defined by the effects of the development on an

AONB. They argued that where no adverse effect could be shown, then a development would not be “major development” irrespective of its size. In response, Stroud District Council argued that “major development” was defined by its potential, rather than actual impact. It relied on the relevant policy in the Gloucestershire Structure Plan (NHE4) which defined “major development” as follows:

“The definition of ‘major development’ is affected by issues such as location, scale, context and design. ‘Major’ cannot be quantified or determined at the strategic level in this context. However, potential impact can be judged against the local characteristics of a particular proposed site through the local plan process, thereby allowing for the local interpretation of ‘major’ and so ensuring the retention of qualities of local distinctiveness within the AONB.”

30. The council then argued that, when assessed against other policies, the site was “a major strategic site”, exceeded the threshold for “strategic employment site”, exceeded the threshold for EIA development, and exceeded the threshold requiring a Transport Assessment. On any assessment, the council argued that this was “major development” for the purposes of paragraph 22 of PPS7.

31. Addressing the competing arguments, the Inspector concluded:

“9.6 PPS7 does not define major development but requires that such proposals should be the subject of the most rigorous examination. Paragraph 14.2.22 of the GSP implies that what is “major” depends upon details such as the characteristics of a particular site, so that only after considering the impacts of a particular project at a known site would its status as major be known. However this text is not repeated in the SDLP, which corresponds more closely to the form of PPS7 as it has been from 2004, rather than the earlier version which would have influenced the GSP.

9.7 The Councils have pointed out the scale of the development in terms of floorspace, car parking, and traffic generation and provided several illustrations of thresholds for policy and assessment purposes, all of which would embrace the appeal scheme, in some cases by a very substantial margin. In my view both the appeal scheme and the Main Site alternative should be regarded as major development in the terms of PPS7, without relying upon a detailed assessment of their effects at this location. To take a different approach would preclude the rigorous examination which the guidance specifies should be carried out if development is “major”. Similarly, to determine otherwise in applying policy would undermine the objective of paragraph 23 of PPS7 to achieve high environmental standards where such development is permitted by imposing appropriate conditions. The need for such conditions must arise from the potential impacts of a major proposal, even though its actual impacts may be shown to be acceptable. For these reasons I do not for this purpose accept Leda's argument that the appeal scheme is not a major development because it would not have a serious impact on the AONB.”

32. As such, the Secretary of State agreed with an approach which: i) focused on a broad assessment of potential impacts rather than carefully assessed actual impacts, and ii) considered it relevant that a proposed development exceeded other relevant planning thresholds, such as those where an EIA or Transport Assessment was required, or above which a site would be considered “strategic”.

33. In an appeal by Glyndebourne Productions Ltd in respect of land at Mill Plain, Glyndebourne (APP/P1425/V/07/1201896) (10th July 2008), the Secretary of State agreed with his Inspector's reasoning in finding that a proposed wind farm development was not "major development" in an AONB for the purposes of paragraph 22 of PPS7. The Inspector said:

"139... Conflicting views were expressed at the inquiry as to whether the proposed development should be considered to fall within the terms of these provisions [para.22 of PPS7].

140. I agree with the applicant that there is a palpable link between the provisions of paragraph 22 of PPS7 and the contents of paragraph 12 of PPS22. The latter charges regional planning bodies and local planning authorities to list criteria which set out the circumstances in which particular types and sizes of renewable energy projects will be acceptable in nationally designated areas. It goes on to record that small-scale developments should be permitted within such areas provided there is no significant environmental detriment to the area concerned... the issue is specifically considered in RPG9... Paragraph 10.77 states that wind and other renewable energy projects should not be precluded in AONBs as there will be locations where small scale construction can be accommodated in which any conflict with the purposes of landscape protection can be avoided... The same paragraph gives an example of a small scale scheme – a wind development of between one and four turbines not generating more than 5MW.

141... The application falls well within the terms of the illustration and it follows that I also conclude the case is not one which needs to be considered against the contents of paragraph 22 of PPS7."

34. As such, the Secretary of State agreed with an approach which defined "major development" by reference to local circumstances and by reference to compliance with other policies applicable to the area.

35. In addition to these Secretary of State decisions, there are a number of Inspectorate decisions that are relevant:

(1) In an appeal by Castle Combe Circuit Ltd (APP/J3910/A/04/1163626) (24th November 2005), the Inspector rejected the submission that "major development" ought to be construed in line with the definition in the 1995 Order, and instead assessed the potential impacts of the development and local circumstances;

(2) In an appeal by Winchester Marine Ltd (APP/N2535/C/08/2085832) (5th May 2009), the Inspector noted that many Councils used the definition from the 1995 Order to define "major development" in paragraph 22 of PPS7. However, the Inspector rejected this approach, stating that "PPS7 does not necessarily intend to defined 'major development' in the same terms as the GDPO... Therefore I consider there could be scope to interpret what is

meant by major in PPS7 in the light of local circumstances and particular proposals”. He then held that although a change of use could amount to a major development, the alleged change of use was not within the category of “major” developments on account of its “extent and character”.

(3) In an appeal by Havenstreet Cricket Club (APP/P2114/A/09/2100514) (29th September 2009), the Inspector applied the 1995 Order definition to “major development” in paragraph 22 of PPS7.

(4) In an appeal by Rydon Homes (APP/D3830/A/10/2132146) (9th December 2010), the Inspector expressly rejected the approach taken in the Havenstreet appeal and found that the definition in the 1995 Order did not apply to paragraph 22 of PPS7. The Inspector found that paragraph 22 of PPS7 only applies to developments that raise issues of national significance.

(5) In an appeal by Netherwater Environmental Ltd (APP/M9496/C/08/2084432) (26th October 2010), the Inspector said:

“An assessment as to whether development falls within the definition of major does not revolve around whether it is harmful or not; that is more appropriate to an assessment as to whether planning permission should be granted for it. As a matter of fact and degree and having regard to the scale of the operations envisaged over an eight year period, I conclude that the proposal comprises major development, a conclusion also reached by the assessor”

36. Although there is some variation in approach, the following principles can be drawn from the decisions:

- (1) In general, “major development” in PPS7 is not interpreted in line with the definition in the 2010 Order;
- (2) The definition of “major development” is based on whether, *prima facie*, the development might potentially have adverse impacts on a National Park or AONB, rather than whether, after a careful and close assessment, it will have such adverse impacts;
- (3) It will be relevant to consider whether the development exceeds other relevant planning thresholds, and whether the development complies with other relevant planning policy.

Analysis

37. Before I express my view on what I consider to be the correct interpretation of “major development” in PPS7, I will briefly set out what I consider to be the incorrect approaches.

(1) First, I do not consider that “major development” is limited to development which is of national importance or significance. That approach was suggested by the Rydon Homes decision, and is to some extent adopted by the Lake District and Dartmoor NPAs in their policies. I do not consider this to be a correct interpretation of paragraph 22 of PPS7. That paragraph says that the policy “includes major development proposals that raise issues of national significance” (emphasis added). In my opinion, that does not limit the policy to such proposals. As such, I consider the local, or regional, or national significance of a proposal is irrelevant to whether it amounts to a “major development” for the purposes of paragraph 22 of PPS7.

(2) Secondly, I do not consider that the definition of “major development” is dependent on whether the proposal will in fact have a significant adverse impact on a National Park or an AONB. Paragraph 22 of PPS7 states: “Because of the serious impact that major developments may have on these areas of natural beauty, and taking into account of the recreational opportunities that they provide, applications for all such developments should be subject to the most rigorous examination” (emphasis added). As such, part of the examination of an application for a major development is the extent to which the development causes a detrimental effect on the environment, the landscape and recreational opportunities (see paragraph 22(iii) of PPS7). But the assessment of the impact of a major development comes after it has been identified as a major development; it is not part of the definition. As such, I agree with the approach taken in the Leda Properties and Netherwater appeals, and consider that the approach adopted by the Lake District and Exmoor NPAs in defining “major development” by reference to its adverse impact on the National Park is not to be recommended.

38. In my opinion, the correct approach to identifying a “major development” for the purposes of paragraph 22 of PPS7 is as follows:

- (1) The definition of “major development” in the 2010 Order is not the definition for the term as used in paragraph 22 of PPS7.
- (2) Major development, for the purposes of paragraph 22 of PPS7 is any development which, by reason of its scale, character or nature, has the potential to have a serious adverse impact on the natural beauty and recreational opportunities provided by a National Park or AONB. That does not require an in-depth consideration of whether the development will have such an impact. Instead, it requires a prima facie assessment of the potential for such impact.
- (3) Assessing whether a proposed development is a “major development” is a matter of judgment based on all the circumstances. It is not a matter that can be determined by criteria alone.
- (4) However, criteria *may* be used to raise a presumption that a development is a “major development”. That criteria might include:
 - i. The development is EIA development. EIA development is development likely to have significant environmental effects and is therefore an appropriate criterion to apply in this context;
 - ii. The development falls within Schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 1999 (as amended) (those developments falling within Schedule 2 have the potential to have significant environmental effects and therefore this is an appropriate criterion to apply in this context);
 - iii. The development is “major development” for the purposes of the 2010 Order (even though the definition in the 2010 Order does not apply directly to paragraph 22 of PPS7, the criteria set out in that definition is a useful starting point to identify development of a size, character or nature that may have a significant adverse impact on the National Park);

iv. The development requires the submission of an appraisal/ assessment of the likely traffic, health, retail implications of the proposal. The application of this kind of criteria appears to be supported by the Secretary of State's decision in the Leda Properties appeal.

(5) If the criteria above are met, the NPA must consider whether there is anything to rebut the presumption that the development is major development. Local circumstances, the particular facts of the application, and other applicable planning policies must be taken into account before coming to a view on whether the development, by reason of its scale, character or nature, has the potential to have a serious adverse impact on the natural beauty and recreational opportunities provided by a National Park or AONB.

(6) There may also be circumstances in which an application which does not raise a presumption that it is a "major development" may nonetheless be properly regarded as a "major development" when all the circumstances are considered.

39. Instructing solicitors will note that, of the approaches adopted by other NPAs, I consider that the policy adopted by the Brecon Beacons NPA most closely matches my view of the correct approach.

Conclusions

40. For the reasons set out above, I do not consider that the definition of "major development" in the 2010 Order is applicable to the term "major development" in paragraph 22 of PPS7. However, as explained above, the criteria set out in the definition in the 2010 Order may be useful to apply as a part of a criteria based approach.

41. If there is anything else I can assist with, I can be contacted in Chambers.

JAMES MAURICI
Landmark Chambers

**180 Fleet Street
London
EC4A 2HG
Tuesday, 14 June 2011**

IN THE MATTER OF THE SOUTH DOWNS NATIONAL PARK AUTHORITY
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OPINION

Katie Kam Solicitor
katie.kam@westsussex.gov.uk
01243 753836
South Downs National Park
West Sussex County Council
Room 235
County Hall
Chichester
PO19 1RQ