SECOND REPORT

FROM THE

SELECT COMMITTEE

OF THE

HOUSE OF LORDS

ON

PRACTICE AND PROCEDURE

TOGETHER WITH THE PROCEEDINGS OF THE COMMITTEE, MINUTES OF EVIDENCE AND APPENDICES

Ordered to be printed 26 July 1977

LONDON

HER MAJESTY'S STATIONERY OFFICE

£1.10 net

(256)

APPENDIX 2

Submission by the Council for the Protection of Rural England

1. A House of Lords' Select Committee on Procedure was appointed on 19 July 1976 with the following terms of reference:—

> "to consider the practice and procedure of the House and to make recommendations for the more effective performance of its functions".

We note that the House of Commons also appointed a Procedure Committee on 12 July 1976 with terms of reference similar to these though restricted only to public business.

2. CPRE's representations bear on Parliament's relationship with the Executive. But we would not care to say whether these relate to "public" or "private" business only. In our view, they relate to both. We are also concerned lest our observations fall between two stools: each House's Committee is apparently to be concerned only with its own procedures. Yet our concern is with failings of *Parliament*, rather than with defective procedures in one House or the other. It is essential in our view that the two Committees should explore together the issues we are raising.

CPRE's issues

3. We are concerned with two matters:—

(i) The inadequacy of Parliament's present procedures for the review of government policies having a continuing and severe impact on the environment.

(ii) The absence of an appeal procedure to Parliament on matters of public importance arising from public local inquiries.

(i) *Inadequacy of Parliamentary review of government policies*

4. In many individual cases of major environmental controversy (for example motorways, power stations, power lines, oil refineries and reservoirs), government "policy" is involved. The forum in which public concern is expressed in such cases is the public local inquiry. But, at such inquiries, the doctrine is that "policy" matters are for Parliament only to consider.

5. This doctrine is reflected in the Town and Country Planning (Inquiry Procedure) Rules 1974 (Rule 8(5)) and the Highway (Inquiry Procedure) Rules 1976 (Rule 6(2))—and applies by analogy to (a) confer on the Inspector a formal discretion as to how to define "policy", and (b) to restrict the scope of the challenge objectors can mount.

6. This has already led to grievances—for example, at inquiries into the M16, the Airedale Trunk Road and the M3. It will do so much more in the future—for example in the field of nuclear power proposals. For with increasing government involvement in the promotion of schemes (in the areas cited in para 4 above), the Inspector will rely on instructions from the Department responsible for advice on what areas of discussion are to be held to be "policy".

7. DOE's "Notes for Guidance" on road inquiries[1] illustrate this point. So does practice at electricity inquiries. We note also that the water industry and the oil industry are moving rapidly in the same direction: implementation of the 20-year National Water Strategy proposed in the Government's recent Consultative Document on the Water Industry, and the new procedure for consents for oil refineries in DOE Circular 20/76 will extend the influence of "policy" into areas where it has not applied in the past. In so doing the scope for valid public challenge to individual proposals will be further diminished.

8. The novelty of this should be stressed. Under Private Bill procedure, there has never been any constraint on the right of an objector to argue against the "need" for any project proposed. In Opposed Bill committee proceedings, the preamble of a Bill must be "proved" by the promoters, against whatever challenges the Petitioners care to advance. All the forms of development with which we are here concerned—roads, power stations and lines, oil refineries, reservoirs etc.—would have had, at one time, to have proceeded

[1] Notes for the Guidance of Panel Inspectors: Chapter P.1 Orders under the Highways Acts (DOE April 1975). See *House of Commons Debates*, 10 February 1976, Col 139.

by Private Bill[1]. However, over the years, Parliament has devolved many powers of consent to the executive—and all these forms of development are now subject to administrative consent procedures, in which, as we have noted, considerations of departmental "policy" play an ever-widening role. In other words, in recent years, for all the rhetoric of "public participation", the public affected by such schemes has lost ground. The area over which valid objections to schemes can be made and argued has seriously contracted and is continuing to contract, at the very time at which the impact of the schemes is attaining unprecedented scale.

9. As will be seen below (paras 24–26), we think, like Lord Molson[2], that there should be a means of appealing against administrative decisions affecting the environment in which issues of public policy, or other important questions, are raised. However, there is also a vital need, in our view, for Parliament to devise means to exercise better its review of policy function, *prior* to proposals being brought forward.

10. What is the evidence that Parliament has been failing in its role as overseer of "policy" considerations *vis-à-vis* the developments with which we are here concerned? The example of the motorway programme is both graphic and topical. Repeatedly, at recent public inquiries, the adequacy and appropriateness of the DOE's methods of traffic forecasting and cost-benefit appraisal for major road schemes have been called into question by objectors at public inquiries. Repeatedly[3], Ministers have claimed that such matters bear on "government policy" and so lie outside the scope of public inquiries. Instead, it has been argued, Ministers are responsible to Parliament for these matters. Yet Parliament has shown minimal interest in the years since the 1970 White Paper "Roads for the Future" (Cmnd 4369) in scrutinising and keeping a check on the justification for a massive rolling programme of road construction. Nor does scrutiny of Hansard in the period immediately preceding the adoption of "Roads for the Future" suggest that Parliament made any attempt at that time either to identify or anticipate the environmental or social difficulties to which implementation of the programme is now increasingly giving rise.

11. Indeed recent difficulties appear to have found Parliament seriously deficient in procedures which might enable public discontents to find parliamentary expression. The House of Commons specialist roads group recently told the CPRE that it would be at least a year before a CPRE deputation could be received by the group[4]. The lack of parliamentary resources implied by this startling admission is made doubly disturbing by clear evidence that Ministers themselves have little or no understanding of the tools and methodologies now used routinely in their names by the Department of the Environment. On the last occasion on which the DOE's traffic forecasts were discussed in Parliament, the Government spokesman confessed herself unable to understand the mathematics involved[5]. We doubt if she is alone in this.

12. The doctrine of Ministerial accountability to Parliament on the "policy" questions arising from objections to new road proposals thus appears to us to have collapsed. CPRE has not condoned the disruptive methods employed by some objectors at recent inquiries. Indeed, the contrary[6]. But we consider that an important element in such disorders has been the frustration of local people at the steadily widening gap between the theory of parliamentary accountability and the momentum of the DOE's roads programme.

13. It is not to roads alone that these criticisms apply. In our view a potentially even more serious situation could arise in the future with respect to electricity policy, and in particular to a long range nuclear power programme. Present official expectations are that by the year 2000, the UK will be heavily committed to a large programme of nuclear

[1] See Memorandum and subsequent oral evidence of Rt Hon Lord Molson in the Second Report from the Joint Committee on Delegated Legislation, 1972–73, pages xxix–xlvi (HL 204, HC 468).

[2] Idem.

[3] See, for example, *House of Lords Debates*, 25 February 1976, Col 803, *House of Lords Debates*, 2 July 1976, Col 1009.

[4] Correspondence between CPRE Assistant Secretary and Alan Fitch, MP, Chairman of House of Commons All Party Roads Study Group, July 1976.

[5] *House of Lords Debates*, 25 February 1976, Col 804. The Government spokesman was Baroness Stedman.

[6] See for example, letter to *The Times* (29 July 1976) by the Director of CPRE.

power stations, including, possibly, Fast Breeder Reactors. The forecasted scale of such a programme[1] implies a vast and ever-growing disruption of the physical environment, as well as continuing controversy over nuclear safety, security and waste disposal. However, given present statutory and procedural arrangements, objectors to nuclear power station proposals already find themselves in a position of equal impotence to present objectors to major road proposals. When objections come to be voiced at future public inquiries that the nuclear power programme justifying a particular proposal rests on wrong-headed assumptions about demand and safety, or on a failure to take into account the *total* impact on the environment, or on an under-valuation of the importance of remote countryside, (and so on), Inspectors will rule that challenge to official witnesses on such matters is challenge to "government policy" and as such for Parliament alone to take up with the responsible Minister.

14. It is abundantly clear however that at that time Parliament will be in no position seriously to challenge the Minister on the overall merits of the nuclear power programme, given the vast technical, political and economic momentum the programme will then possess. What is even more serious is that there is no sign at all that in *present* consideration by Parliament of long term energy policy, environmental and social factors of the kind we have identified—which will be felt at a myriad of *local* levels—are being investigated or appraised.

15. If Parliament fails to take the initiative now in such matters, *vis-à-vis* nuclear power, it will run a serious risk of losing all credibility at the time that objections start to arise (say, in the late 1980's). For in the nuclear power programme (as with the programme for roads, water and oil refining) Government departments and agencies are now developing and refining planning methodologies and strategies the effects of which will be felt for years into the future. Parliament appears to us to be facing the sophisticated and complex problems posed by such contemporary techniques and procedures with methods and practices conceived largely in 19th century terms. In 1973, a House of Commons Select Committee recognised (albeit in a different context) the problems this posed for Parliament, when it noted that "It is likely to become increasingly difficult as long-term and medium-term planning techniques become more sohisticated for Parliament to be kept adequately informed on what is going on in the nationalised sector."[2] But the legislature has so far failed completely to evolve procedures which would enable such long range planning by the executive to be challenged fully and effectively on grounds of inadequate consideration of potential environmental and social impacts.

16. We firmly believe that consideration of these issues must not be left to the executive. Parliament's role is important, if public confidence in the accountability of Ministers is to be restored. Indeed in the absence of action by Parliament, we doubt that the present doctrine on "policy" issues raised at public inquiries will prove acceptable in future. This means that disruption of statutory procedures would become increasingly common—a grim prospect for the democratic process itself.

17. It is relevant to note that hostility to centralised decision-making is a modish attitude in many spheres of public activity. CPRE has always been anxious to ensure that there is full public participation in land use decisions and that where appropriate, decisions which can be taken locally should be. But we do not question the value and necessity of centralised policy making if, for example, intelligent and economical use of the UK's limited and precious land resource is to be achieved. Parliament's role in policy-making of this kind is vital, where programmes by executive agencies are concerned. If this role is not strengthened, Parliament will contribute to the erosion of its own credibility.

CPRE's suggestion

18. We suggest there is a need for the creation of Select Committees which can act as focal points for representations by bodies outside Parliament on the issues raised by long range planning by government departments and agencies. Each Committee should deal

[1] United Kingdom Atomic Energy Authority gave evidence to the Royal Commission on Environmental Pollution (1974–75) which implied a further 60 nuclear power stations by the year 2000, escalating sharply beyond that year, and entailing extensive concomitant electricity distribution and fuel cycle facilities.

[2] 1st Report from the Select Committee on Nationalised Industries 1973–74, on *Capital Investment Procedures*, para 109.

with a different subject matter. The function of such Committees should be to inform Parliament and the public at large of the range of consequences likely to flow from particular strategies, at a stage at which policy options are still open. What stage this would be in a particular case would depend on the subject in question: the development of the Fast Breeder Reactor would need to be considered at once through study of possible consequences of the programme 25 or 30 years ahead. Oil refinery policy could be considered within a shorter time-frame, as could development of the motorway programme.

19. It seems to us that the proceedings of such Committees could be made more effective if they drew on one of the public participation procedures now employed by the Department of the Environment for Structure Plans, under the Town and Country Planning Acts—the so called "examination-in-public" procedure[1]. In a recent submission to the Secretary of State in response to the Government's consultative Document on the Water Industry, CPRE proposed that a variation on this procedure should be made mandatory before the quinquennial acceptance by Parliament, and the adoption by the Minister, of the proposed twenty year national water strategy[2]. CPRE argued that such a long term strategy would inevitably have a serious impact on a wide range of interests outside the water industry. Moreover, it was argued, public priorities and values would be likely to shift and alter over the very long period over which the strategy would apply. It therefore seemed sensible for interests outside the water industry to be given an opportunity to put arguments against the official view to a neutral inspector, who would in turn report his findings in a report to a Select Committee of Parliament. This report would thus make available to Parliament a wide range of opinion and expertise—a vital function in view of the present inadequacy of funds available to Select Committees for the employment of experts of their own. It would also foster a sense of public participation in the long range strategy, thus diluting much of the controversy likely to arise at later stages when particular elements in the strategy came to be implemented.

20. We expect the Government to be sceptical of this proposal. For our suggestion implied that the "examination-in-public" would be conducted by an inspector (or panel of inspectors) unconnected with the Department of the Environment. Far from challenge to "policy" matters being barred, such challenge would be precisely the function of the procedure. National Water Council and DOE witnesses would be available to argue issues and assumptions with informed objectors. Subsequently, the responsible parliamentary Select Committee might hold its own less detailed investigation into particular points raised. But it, and the public, would be sure that the relevant criticisms had indeed been raised, at a stage early enough to influence the long range policy ultimately adopted.

21. It may be argued that not all government policies fall into a neat 20-year time frame for consideration in this way, or that they would not lend themselves to this kind of quinquennial review. In principle we do not agree. While there may be differences of perspective and financial planning in different industries, recent experience shows that executive agencies are generally able (if reluctant) to furnish coherent information on their long range plans. In March 1975, the Chairman of CPRE was informed by the Chairman of the Central Electricity Generating Board (CEGB) that a request that the CEGB should publish its strategy for electricity supply for the next 25 years was "impracticable"[3] as the future over that period was too uncertain in every way. Yet just 15 months later, the CEGB published a Corporate Plan[4] covering the years 1976–1995, including references to possible eventualities as far ahead as the year 2000 (a strategy for the next 24 years in fact). Similarly, at the request of the Secretary of State for Energy, a wide range of public and private bodies, including the Department of Energy, recently produced valuable speculative documents on energy policy possibilities up to and beyond the year 2000, in preparation for the Energy Conference held in Church House on 22 June 1976.

22. There thus seems little doubt to us that if Parliament explicitly asked the appropriate public bodies to make available long range planning strategies on particular topics such as roads, nuclear power, water etc., such strategies could be provided in a form suitable for the process of scrutiny we have suggested above.

[1] Town and Country Planning (Amendment) Act 1972, S 3.

[2] Comments on Review of the Water Industry in England and Wales—a Consultative Document (CPRE July 1976).

[3] CPRE/CEGB correspondence, March 1975.

[4] Corporate Plan 1976, (CEGB June 1976).

23. It should be mentioned that there is already substantial support outside Parliament for the line of action we are now suggesting. In December 1974, the Department of the Environment asked a Study Team (Messrs. Catlow and Thirlwall) to investigate the possibility of introducing into the UK a system of "Environmental Impact Analysis" for certain forms of large development. A number of bodies, including the Lawyers' Ecology Group, the Civic Trust, the National Farmers' Union, and Friends of the Earth, as well as the CPRE, urged that the Study Team should look at ways in which such procedures for Analysis could be applied to "the long range planning strategies of public agencies"[1]. The final report of Messrs. Catlow and Thirlwall has not yet appeared, but the Interim Report (published for comment in July 1975) gave no indication of the Study Team's attitude to this suggestion. The range of bodies favouring such a course of action suggests that CPRE is far from alone in feeling disturbed at the failings of Parliament's present procedures for the review of government policies having an impact on the environment.

(ii) *Appeal to Parliament from public local inquiries*

24. Lord Molson has suggested[2] that it should be open to any member of the public with *locus standi* to petition Parliament against any local Order or administrative decision (e.g. on a planning application). This would mean that Parliament would become the court of last resort on the *merits* of Ministerial decisions of the kind with which the CPRE is concerned, rather than the Minister having the last word, as is almost universally the case at present. Lord Molson proposes that this should be a procedure to be used only in cases where particular Orders or decisions give rise to issues of special public importance.

25. We strongly endorse this suggestion. It is eminently workable, in our view, in all ways but one. Lord Molson has suggested that, in the event of the reference of an Order or decision to an *ad hoc* Joint Parliamentary Committee for a further hearing, the parties to the hearing should be asked "to agree the facts as found by the Inspector so as to avoid the costly and laborious hearing of technical and further evidence and to allow the Joint Committee to consider the Order from the point of view of equity and the public interest"[3]. We note however, that in his oral evidence on this point[4], Lord Molson was considerably less certain that "the facts" could always be agreed in advance. We think he was right to be sceptical. While it is probably true that agreement between the parties along such lines could be established in most cases, it will not always be so. Nor should it be. For considerations of "equity" and "the public interest" may in certain cases make it desirable that for example, issues of "policy" should be discussed before a Joint Committee. Circumstances can be envisaged where this could and should entail the leading of new evidence.

CPRE suggestion

26. Whilst the CPRE therefore urges the Select Committee to adopt Lord Molson's proposed procedure, as a valuable *ex post facto* safeguard, we consider that the Standing Orders should leave the "agreement of facts" to the discretion of any Joint Committee conducting an inquiry.

CPRE,
4 Hobart Place,
London, S.W.1.

September 1976.

[1] Submission to the inquiry of a Panel of the DOE into Environmental Impact Analysis (CPRE April 1975).

[2] See note (1) above [page 31].

[3] Joint Select Committee Report 1972–73 (as in Note (1) above [page 31], para 66).

[4] Ibid. Minutes of Evidence, para 244.