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PLANNING INQUIRIES – THE NEW DIMENSION

PARLIAMENT & THE PLANNING INQUIRY SYSTEM

by

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Parliament & The Planning Inquiry System
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1. Over the years the nature and structure of planning inquiries has evolved gradually and logically to a modern piece of machinery which is highly tuned, fairly elaborate and on the whole well suited to its function of enlightening the Secretary of State on the issues and implications of the planning application, and of passing on informed opinion, so that he is put in as good a position as possible to make a good decision on whether the development should take place and if so under what conditions.

2. The evolution of change can be seen in the rules of procedure, introduced on a statutory basis in 1962 and achieving their latest expression in 1974. It can also be seen in development of practice in the conduct of the inquiry process, for example in the accepted custom nowadays of holding pre-inquiry procedural meetings for major cases. In both of these areas the Government's role has been predominant. It is responsible for making the rules and for improving them as occasion requires, and as a matter of good administration for securing improvements in the practical conduct of the inquiry from time to time. This kind of evolution is recognisable and expected as the province of good government.

3. But another evolution has also been happening, more recent on the scene and more rapid, and that is the role of parties who are opposed to the development in question, especially third parties. Unlike the evolution in rules and practice this evolution has not come about under what might be called controlled conditions. It has been due largely to external factors, notably the growth in sensitivity over human rights and environmental protection and of questioning of previously accepted assumptions, and it has taken the trend of moving away from local and specific opposition to opposition through national pressure groups opposed to the concept underlying the site-specific proposal.

4. These two evolutions have recently begun to interact in interesting and significant ways. In the great majority of planning inquiries the interaction is not apparent but it has been distinctly noticeable in the bigger and more complex inquiries and, most famously of all, in the clamour a few years ago over motorway inquiries. This is therefore a good time to take stock of the system and the direction of its development.

5. Much of the character of the system is to be found in the rules themselves. Of their formative features some may be called institutional, some attributable to social conventions and some specifically addressed to a code of practice. I would place first the character of the British legal system with its tradition of oral argument and, in strong association, the embodiment of the concepts of openness and fairness - in for example the rule that anyone who will be affected by a decision must be given notice of the case he has to meet and has a right to be heard and in the principle that "justice must not only be done but be seen to be done".

6. Secondly, and more recently, there was the growing public dissatisfaction in the 1950s over the treatment accorded to owners and objectors whose property and daily life could be affected by the action of a public authority, especially by compulsory purchase. This led to the Committee on Administrative Tribunals and Inquiries (the Franks Committee) and to the making of statutory rules of procedure for inquiries embodying the recommendations made by that Committee to ensure that the principles of openness, fairness and impartiality were properly applied to quasi-judicial procedures. Allied to this was another modern trend of monitoring the conduct of public authorities so as to protect and sustain individual rights, of which the chief expressions are the Council on Tribunals, the Parliamentary Commission for Administration and the Commissions for Local Administration. In such a climate it is perhaps only natural that a further influence has been the strong interest and emphasis of the Courts in recent times in developing the concept of natural justice, in its application to the exercise of quasi-judicial functions, in the form of a special code of conduct and practice for the holding of local inquiries and the giving of decisions. Finally, in addition to the general

feeling that people involved in inquiries should have "a fair crack of the whip", there is the growth of modern protest movements and environmental pressure groups concerned with questioning policies, doctrines, needs and conduct hitherto thought acceptable and even well established.

7. Of these influences the one with the most direct bearing on the character and conduct of inquiries has been the Franks Committee. The public dissatisfaction the Committee sought to tackle was due to a few leading causes. Objectors might know nothing and appellants little of a local authority's case before the inquiry opened. The inspector's report was not published and his recommendations were not disclosed. The parties did not know whether they had convinced him or what material and considerations outside the evidence given at the inquiry might have been taken into account. Reasons given for the decision were frequently very brief and not very informative.

8. The result of the making of procedural rules implementing the Committee's recommendations was a significant improvement in the procedure. These improvements may be summed up as follows -

a. the appellant (or applicant in a called-in application) knows the case he has to meet, ie statements by the planning authority must be provided in advance,

b. in called-in applications the Secretary of State must say what appear to him to be the relevant issues,

c. if a Government department has expressed objections to the development this view must be disclosed to the appellant or applicant and the department concerned can be required to send a representative to the inquiry to state its reasons and to answer questions,

d. the appellant or applicant can be required to state his case before the inquiry,

e. everything relevant must be dealt with at the inquiry; if something fresh which is material crops up afterwards the parties must be given the opportunity to comment and, if appropriate, the inquiry is reopened,

f. the reasons for the decision must be stated and in those cases decided by the Secretary of State (not by an inspector) the inspector's report is sent to the parties.

9. Strongly related to, and partly deriving from, the character of planning law and the development of procedural rules is the character of the proceedings themselves. The nature of the statutory planning provisions lands itself easily to a pro and con situation - presentation of case with supporting evidence, presentation of counter case with counter evidence, examination of evidence through witnesses, assessment by independent arbiter and finally the promulgated decision. Very much in the fashion of a court of law. Hence the advantage most appellants and authorities find in being legally represented, and hence the development of the strongly adversarial character the proceedings now have. In respect of major cases this outcome is not infrequently criticised as making for lengthy and costly inquiries, and the criticism is sometimes accompanied by the suggestion that we ought to get back to a more informal and less daunting regime. However that may be - and for major inquiries I believe there is no going back - there is no doubt about the usefulness of planning inquiries as they have evolved for all those who take part in them. What we now have is a highly effective system for investigating and assessing the matters that are brought to inquiry.

10. What we do <u>not</u> have at the present time is unanimity on the range of matters that should be allowed to come before the inquiry. Basically all planning inquiries are site-specific and proceed on the presumption that the development in the application should be permitted on the site unless good reasons are found to the contrary. But at major and complex inquiries, particularly those concerned with the projects for energy production, issues are now being raised which extend beyond the local level to the regional, the national and even the international dimension, as happened at Windscale. These issues are concerned with need and policy, and the kind of questions that are being asked cover such matters as the need for the development <u>wherever</u> it is sited, the choice of location in terms of economic, environmental, safety considerations, the role of the development within an overall economic strategy and the particular model to be adopted to

carry out the role.

11. The reason for these questions is clear. In the vast majority of cases planning inquiries are held against a settled policy background, or at any rate against a background where the issues have been made abundantly clear, but now and again such a background may not be wholly present, especially in areas of controversy, strongly held opinion and developing technology, and the question arises of what sort of inquiry can accommodate such issues satisfactorily. If there is a feeling abroad that the public inquiry process may need some adjustment so as to achieve its objective - the production, presentation and assessment of evidence so as to put the Secretary of State in the best position to make a good decision- what form might the adjustment take? The choice seems to be between three courses. First, arrangements can be made to admit issues of need etc. and to see that the inquiry machinery is geared up to try to meet it, as happened at Windscale. Or standard special machinery might be produced which could be applied in all complex major cases. Or for each of these cases there should be provided an inquiry structure made up of recognisable components and designed specially for the content and character of each. Whichever route is chosen it does appear that for the rare big cases a logical and comprehensive process is required, either in one distinct stage or in two stages, to deal with both the principles, policies, needs, economic strategy etc and also to deal with effects specific to the site, ie the traditional job of the public local inquiry.

12. The circumstances in which the choice is made are bound to vary. The policy and the background may be settled or clear enough but the impact of the proposed development may be very great. On the other hand there might be widespread agreement on most of the facts but a considerable diversity of opinion, or the facts themselves might not be sufficiently well established for sound opinions to be formed. Various ways have been advanced for tackling such initial problems.

Suggestions have included seeking a report from a standing committee or commission who happen to be engaged in the subject matter, the setting up of a special ad hoc body of experts, or of drawing upon the ability of a Select Committee of Parliament to examine policy issues in depth. Each has its obvious attractions, and it would be imprudent in the abstract to settle for one to the exclusion of others. A very important factor is one that is not intrinsic to any, the degree of public acceptability that the chosen method can command. In an age when representations about proposed developments of more than local concern are coming increasingly from articulate national environmental bodies it is vital to the health of the investigatory process that it should have the confidence of the public.

13. Even this may not be enough. There may be a feeling, as there was with the Windscale inquiry, that the matters at issue are so important that Parliament should be involved - a feeling which Parliament might share - and the decision not left entirely to the Secretary of State. Parliament has no formal relationship with the planning system and has at present no way of handling sensitive planning issues of national importance. Yet it might be thought unfair that the planning system should be left to take the strain of these issues. You may recall that, following the Windscale inquiry, the Secretary of State felt obliged to discharge his statutory responsibility by refusing planning permission, thus enabling him to take part freely in Parliamentary debate on the subject. Thereafter when Parliament had found in favour of the development the permission was conveyed by a Special Development Order. The issue at Windscale was basically whether this country should go in for nuclear reprocessing, and it could be said that Parliament felt that this was too important an issue to leave to the process of the planning system and the decision of Government. Whether it might be said that Parliament made itself momentarily part of the planning system or whether in the particular context the planning system performed a useful function for the benefit of Parliament no doubt makes for interesting speculation among those interested in the machinery of government. What is important is that the system was capable of satisfying a new need.

14. So far I have referred to the major inquiries. Such cases, whatever their individual importance to the economy, are relatively few and far between. The vast majority of the 2,500 or so inquiries held each year are not concerned with large projects. They do not normally raise by their very nature national controversy or issues of national policy. Yet in aggregate their importance to the economy is as great as that of the major projects. In cases such as these there is considerable merit - in terms of convenience for the individuals concerned, of reducing the cost of the system, and of the benefits to the national economy - in achieving faster, simpler and less formal inquiries. In this kind of case the difficulties in doing so are not so formidable. That is why for the smaller cases the Government have introduced arrangements for "instant" decisions which we hope to be able to extend in the light of experience. The Government intend also to transfer more cases to the jurisdiction of inspectors and to introduce arrangements for a new kind of informal inquiry, which will be optional to the parties, in cases where an oral hearing is desirable but where the rigours of formal presentation of evidence and cross questioning are not really appropriate.

15. The themeof the Conference is "The Usefulness of Planning Inquiries". Inquiries are indeed an indispensible part of the planning system. They are perhaps the most sensitive means of testing and maintaining the confidence of the public in it. To continue to be useful in their nature and procedure they must be able, both on the major and on the modest scale, to accept change in the general inquiry climate and adapt to changing public expectations, otherwise they will tend to fossilise and become ineffective. It may not be entirely clear what specific developments will appear in the system next but the past has shown that the system is flexible enough to accommodate change and there is no reason to suppose that it will not continue to do so as needs arise.