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## PLANNING IN CRISIS

STRUCTURE PLANS: LOCAL PLANS: COMPENSATION

STRUCTURE AND LOCAL PLANS:  
COUNTY COUNCIL AND DISTRICT COUNCIL RESPONSIBILITIES

by

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STRUCTURE AND LOCAL PLANS:

COUNTY COUNCIL AND DISTRICT COUNCIL RESPONSIBILITIES

The subject of the Conference (so far as planning is concerned) is planning in Crisis. I interpret this as a question directed to the working of the new development plan system. It is a timely question with most structure plans approved or submitted and many local plans in course of preparation, some actually adopted.

In order to consider whether and to what extent there is any crisis or reason for concern it is surely necessary to attempt to define what it is reasonable to expect the planning system to achieve. Then it will be possible to identify the deficiencies and perhaps suggest some of the answers. It may also be possible to allocate some of the responsibilities and place the onus upon those responsible of administering the system to best effect.

In attempting a definition of what it is reasonable to expect the planning system to achieve I am only too conscious that everyone will have his own definition and especially his own order of priorities. It is essentially a matter of subjective opinion.

My definition of expectations that are both reasonable and I believe realistic is threefold:

1. The production of a Development Plan which contains policies and proposals and priorities described and illustrated on plans so that they are clear to the lay public.

2.

The plan should also clearly define the appropriate land use for all land within the plan. I summarise this expectation as "Clarity".

2. The Development Plan should be prepared with a genuine involvement of the public, both the general public as well as those bodies or persons with particular interests. I summarise this expectation as "Real Public Involvement".

3. The Development Plan should be, and should be recognised to be, sufficiently flexible to respond to changing needs quickly. I summarise this expectation as "flexible".

Sir Frank Layfield has spelt out the reasoning and the aspirations which led to the need to change from the old Development Plan system and the introduction of the new two tier system. It is clear that the "failure" of the old style Development Plan was their out-dating combined with too rigid an adherence to the provisions of the plan to enable the necessary flexibility to respond to change. I cannot resist the temptation to comment that the reason for their out-dating was actually due to the inability of local and central government to administer the system within the timescale set by the 1947 Act. Perhaps it was too much to expect monitoring review, publication, public participation and approval of amendments all on a quinquennial timescale. But the real failure surely lay in too rigid an application of the provisions of the Development Plan. I suspect that the lack

of flexibility was really self-imposed and that the old style plans could have been adapted relatively simply to include greater public participation and provide room for greater flexibility in accordance with modern needs. Undoubtedly the old system had benefits against which it is legitimate to test its replacement. Policies, proposals and land use zonings were clear (once the bizarre hatchings and symbols were interpreted and locations on the map were identified). Public involvement was not sought generally in the old style plan system, although as the need for it became clearer so on amendment and review public participation was sought and I think achieved. More importantly in my view than general public participation however are the rights of those effected by planning policies and proposals. The old system in its provision for objection and its procedure for public inquiry into outstanding objections before an independent Inspector reporting to the Secretary of State whose decision on the merit of the objection it was, ensured both the opportunity to test the provisions of the plan and independent judgment of the test. The system operated fairly with due regard to individual rights. I believe the public acceptance of the modern planning system-that is the system introduced by the 1947 Act-was due to the clarity of the proposals and policies and the fair treatment to those adversely affected.

If the need for change is due to the need for a quicker and presumably more responsive system to match the

pace of change today, then it follows that the new style Development Plan must be sufficiently flexible to respond to changing (hopefully not changed!) needs quickly without destroying its credibility as a plan which has been approved and upon which the public is entitled to rely.

I must confess that I have an <sup>o</sup>minous apprehension that far from providing the necessary flexibility to respond to change the new system will be operated (indeed is being operated) with a rigidity as great as anything in the past. Not surprisingly because old habits die hard. Unlike the past however in many cases the new system will not necessarily have been tested, nor in those cases where the opportunity to test the plan is given is the decision thereon made by an independent party such as the Secretary of State, but instead it is left with the Authority itself responsible for the plan.

I suggest that it should be recognised and accepted that the need for flexibility and speed in the new style plan system has as its corollary the need to consider applications for planning permission in the context of the new development plan, but not invoking the provisions of the plan as an absolute reason for refusal. If this is ad hoc planning then I unasham<sup>ed</sup>ply advocate ad hoc planning.

Under the new planning system the respective plans formulated by the two tiers-County and District Planning Authorities-are to be read together and jointly constitute what

is still called the development plan. In fact under the Town and Country Planning Act 1971 ("the 1971 Act") the development plan shall be taken as consisting of:

- (a) the provisions of the structure plan for the time being in force for that area or the relevant part of that area, together with the Secretary of State's notice of approval of the plan;
- (b) any alterations to that plan, together with the Secretary of State's notices of approval thereof;
- (c) any provisions of a local plan for the time being applicable to the district, together with a copy of the authority's resolution of adoption or, as the case may be, the Secretary of State's notice of approval of the local plan; and
- (d) any alteration to that local plan, together with a copy of the authority's resolutions of adoption or, as the case may be, the Secretary of State's notices of approval thereof. (section 20)

This paper is concerned with the responsibilities of County and District Councils (it does not deal with Greater London). I shall be considering these responsibilities insofar

as they relate to formulation of and procedure for adopting the development plan. Responsibility exists too on the Secretary of State for the Environment. However, it is one of the marked features of the new system that it is designed to reduce the involvement of the Secretary of State and devolve power and responsibility down to District Council level. This devolution is presumably considered to be consistent with the duty of the Secretary imposed on his predecessor office the Minister of Town and Country Planning by section 1 of the Minister of Town and Country Planning Act 1943 "the duty of securing consistency and continuity in the framing and execution of a national policy with respect to the use and development of land throughout England and Wales." Control by the Secretary of State is retained directly in the case of structure plans since they are subject to his approval (1971 Act s.9). In the case of local plans, however, the situation is quite different. Once a certificate of compliance generally with the provisions of the approved structure plan has been issued (either by the County Council or the Secretary of State) then the District Council may adopt the plan unless the Secretary of State directs that the plan shall not have effect unless approved by him (1971 Act s.14(3)). Default powers are reserved to the Secretary of State as an ultimate action where he is satisfied (after holding a local inquiry or other hearing) that a local planning authority is not taking the steps necessary to enable it to submit a structure or local plan or proposals for the alteration repeal or replacement thereof, or where a period is specified for the submission or adoption of a plan

or proposals if no such plan or proposals have been submitted or adopted within that period. The Secretary of State may carry out the survey or prepare and make a structure and local plan or alter repeal or replace it either himself or he may authorise another local planning authority to carry out the necessary action (1971 Act s.17).

The form and content of structure and local plans may be regulated by the Secretary of State with respect to the procedure to be followed in connection with "their preparation submission withdrawal approval adoption making alteration repeal and replacement" (s.18). Regulations have been made

Town and Country Planning (Structure and Local  
Plans) Regulations 1974 (amended by the Amendment  
Regulations 1979)

But it is important to recognise that the policy behind the new legislation and the attitude of the Secretary of State is firmly to disengage the Department of the Environment from too close an involvement in the ultimate step of the development plan preparation namely the local plan. "It is, of course, one of the main purposes of separating structure plans from local plans to rid the Central Government of responsibility for a mass of detail which is better dealt with and decided at local level" (Hansard Standing Committee Feb. 29 1968 Col. 186) etc.

Whilst few would disagree with this as a general proposition it is important to consider what is a matter of detail and what is



a matter of substance. It is also, I suggest, important to consider what is meant by "better dealt with". Since it may be in the way matters are dealt with that there is cause for concern.

I now turn to consider the responsibilities of the County and District Planning Authorities for the structure and local plans respectively.

#### Structure Plan

The starting point for the preparation of the structure plan is the survey of their area which the County planning authority have a duty to institute (section 6). They may institute fresh surveys subsequently if they think fit. This is now entirely within their discretion since the residual power of the Secretary of State to direct them to institute fresh surveys is withdrawn by the Local Government, Planning and Land Act 1980 ("The 1980 Act") (Sched. 14 para.1)

The matters surveyed can be wide-ranging- any "matters which may be expected to affect the development of their area or the planning of its development" (s.6(1)). But specifically they must include

- (a) the principal physical and economic characteristics of the area of the authority (including the principal purposes for which land is used) and, so far as they may be expected to affect that area, of any neighbouring areas:

- (b) the size composition and distribution of the population of that area (whether resident or otherwise);
- (c) without prejudice to paragraph (a) of this subsection, the communications, transport system and traffic of that area and, so far as they may be expected to affect that area, of any neighbouring areas;
- (d) any considerations not mentioned in any of the preceding paragraphs which may be expected to affect any matters so mentioned;
- (e) such other matters as may be prescribed or as the Secretary of State may in a particular case direct;
- (f) any changes already projected in any of the matters mentioned in any of the preceding paragraphs and the effect which those changes are likely to have on the development of that area or the planning of such development.

This done the County Council must then within such period as the Secretary of State directs prepare and submit for his approval a structure plan which shall comprise a written statement -

- (a) formulating the local planning authority's policy and general proposals in respect of the development and other use of land in that area (including measures for the improvement of the physical environment and the management of traffic; and
- (b) containing such other matters as may be prescribed or as the Secretary of State may in any particular case direct

and a diagram or diagrams illustrating the written statement.

The diagram(s) is not to be on a map base. (Regulation 12(2))

The written statement shall be one

- (a) formulating the local planning authority's policy and general proposals in respect of the development and other use of land in that area (including measures for the improvement of the physical environment and the management of traffic;
- (b) stating the relationship of those proposals to general proposals for the development and other use of land in neighbouring areas which may be expected to affect that area; and
- (c) containing such other matters as may be prescribed or as the Secretary of State may in any particular case direct. (s.7(3))

and

in formulating their policy and general proposals under sub-section (3)(a) of this section, the local planning authority shall secure that the policy and proposals are justified by the results of their survey under section 6 of this Act and by any other information which they may obtain and shall have regard -

- (a) to current policies with respect to the economic planning and development of the region as a whole;
- (b) to the resources likely to be available for the

carrying out of the proposals of the structure plan; and

(c) to such other matters as the Secretary of State may direct them to take into account. (s.7(4))

Surprisingly the survey is no longer part of the submission to the Secretary of State. (1980 Act Sched. 14 para.2). Moreover the authority do not apparently have to make available to the public copies of the survey material (s.8(2)). The ability therefore of the Secretary of State and any third party to test whether the authority's proposals are in fact justified by the results of the survey seem to rest upon the provision of survey material as a matter of courtesy rather than obligation. I suggest that this is quite unsatisfactory. Survey material should be available as of right.

The structure plan must be accompanied by an explanatory memorandum summarising the reasons justifying each policy and general proposal (s.7(6A)). It seems that the reasoning behind the plan's policies (which in all structure plans of which I am aware is contained within the written statement) is to be transferred instead (or at any rate a summary of it) to the memorandum leaving the written statement to be indeed a statement only. The explanatory memorandum is not to be treated as forming part of the structure plan and therefore there is no statutory requirement to have regard to it in considering the provisions of the development plan. I suggest though that the explanatory memorandum and its justification for a policy or a proposal and especially its contemporary

materiality at the time of a submission of an application for planning permission is a material consideration for the purposes of section 29 of the Act, and should therefore be taken into account when any planning application is considered.

The policy matters contained within the written statement have been prescribed by Regulations as follows:

MATTERS TO WHICH POLICY IS REQUIRED TO RELATE BY  
REGULATION 9(1)

The matters to which the policy formulated in a structure plan written statement is required to relate by regulation 9(1) are such of the following matters as the county planning authority may think appropriate:

- (i) Distribution of population and employment
- (ii) Housing
- (iii) Industry and commerce
- (iv) Transportation
- (v) Shopping
- (vi) Education
- (vii) Other social and community services
- (viii) Recreation and leisure
- (ix) Conservation, townscape and landscape
- (x) Utility services
- (xi) Any other relevant matters.

(Sched.I Part 1)

The generalised nature both of the policies and any proposals is emphatic. I do think that generalisations however clearly and succinctly expressed amount to clarity in planning as I have summarised my first legitimate expectation. It remains to be seen to what extent general proposals are indeed translated into effective positive initiative.

The provisions for ensuring public awareness and opportunity for involvement are extensive (section 8) and the Secretary of State retains to himself the overseeing of the adequacy of publicity and public consultation, including the power to return the submitted plan to the authority with directions as to the action which should be taken by them.

Whilst it is clearly essential to achieve public involvement and the new system strenuously attempts this, consultation must be distinguished from protection of individual rights. A novel feature of the new system was the substitution of the old protection for individual rights through the right of a hearing before an Inspector and determination thereon by the Secretary of State by a duty on the Secretary of State merely to "consider" objections without any requirement for a hearing. (Local Government Act 1972).

The Secretary of State is obliged to cause a person(s) appointed by him to hold an examination in public of such matters as he the Secretary of State considers ought

to be examined. The bodies and persons taking part at the examination shall be such as are invited by the Secretary of State or the person(s) holding the examination (s.9). The extent to which this procedure truly guarantees a proper test of the provisions of the structure is very debatable. It certainly imposes a considerable responsibility on the person holding the examination since he must frequently have to act as inquisitor without the necessary technical back up to support a full test as is afforded by informed cross examination.

In the case of alterations to the structure plan the Secretary of State is not required to cause an examination in public if "it appears to him that no matters which require an examination in public arise" (s.10(8)).

It is clearly a matter of policy not to involve the public as of right in the public examination of the structure plan. Certainly the lengthy development plan public inquiries should if possible be avoided. I support the principle of invitation to the examination. I am however apprehensive that individual rights as well as particular interests can fall into a no man's land between the generalised structure plan and the particularised local plan.

#### Local Plans

District Planning authorities have the responsibility of considering the desirability of preparing one or more local plans for their area.

This plan shall consist of a map and a written statement and shall

- (a) "formulate in such detail as the local planning authority think appropriate the authority's proposals for the development and other use of land in that part of their area or for any description of development or other use of such land (including in either case such measures as the authority think fit for the improvement of the physical environment and the management of traffic and
- (b) contain such matters as may be prescribed. (section 11).

The matters to which the proposals formulated in a local plan written statement are required to relate are "such of the following matters as the local planning authority preparing the plan may think appropriate:

- (i) Distribution of population and employment
- (ii) Housing
- (iii) Industry and commerce
- (iv) Transportation
- (v) Shopping
- (vi) Education
- (vii) Other social and community services
- (viii) Recreation and leisure
- (ix) Conservation. townscape and landscape
- (x) Utility services
- (xi) Any other relevant matters (Sched. 2 Part I)



and the matters required to be contained in a local plan written statement are such indications as the local planning authority preparing the plan may think appropriate of the following:

- (i) The character, pattern and function of the existing development and other use of land in the area to which the plan relates and the present needs and opportunities for change.
- (ii) Any changes already projected, or likely to occur, which may materially affect matters dealt with in the plan, and the effect those changes are likely to have, including when the area to which the plan relates is within the area of a new town, the effect of any development proposed by the new town development corporation.
- (iii) The regard the local planning authority preparing the plan have had to social policies and considerations.
- (iv) The regard the local planning authority preparing the plan have had to the resources likely to be available for carrying out the proposals formulated in the plan.
- (v) The criteria to be applied as respects the control of development in the area, or any part of the area, to which the plan relates.
- (vi) The extent and nature of the relationship between the proposals formulated in the plan.

(vii) The considerations underlying the proposals formulated in the plan as respects matters of common interest to the authority preparing the plan and neighbouring authorities, and the extent to which those proposals have been agreed by the authorities concerned.

(viii) Any other relevant matters. Sched. 2 Part II

The content of the written statement is therefore a matter of considerable latitude for District Councils. It must be expected that they will vary widely in their comprehensiveness and their degree of detail.

In the case of a local plan any diagrams, illustrations and descriptive matter shall be treated as forming part of the plan.

The local planning authority shall secure that the proposals conform generally to the structure plan as it stands (whether or not it has been approved) (s.11(a)).

The provisions for publicity are more particular than in the case of the structure plan namely:

- (a) that adequate publicity is given in the area in question to the matters proposed to be included in the plan;
- (b) that persons who may be expected to desire an

opportunity of making representations to the authority with respect to those matters are made aware that they are entitled to an opportunity of doing so; and

- (c) that such persons are given an adequate opportunity of making such representations; (s.12)

It is noteworthy that the 1980 Act has repealed the requirement previously in section 12(1)(a) that adequate publicity should be given to any relevant matter arising out of a survey carried out by the County or District Council. Of importance however is the specific obligation of identifying persons who may be expected to want to make representations. Furthermore the authority must in considering objections cause a local inquiry or hearing to be held by an independent person. This is therefore the opportunity for an objector to test the provisions of the plan insofar as it affects his interest. Whilst the opportunity for testing the plan is welcome as is the hearing by an independent inspector the report by the inspector and his recommendations are to the authority itself rather than the Secretary of State. Individual objectors cannot be expected to endorse such a system when recommendations from an independent inspector may not be accepted by the authority. The same procedural provisions apply to amendment of the local plan as apply to the original plan. But if objectors have indicated in writing that they do not wish to appear at a local inquiry or other hearing then there is no requirement for the holding of any local inquiry or hearing.

The local planning authority may at any time make proposals for the alteration repeal or replacement of their local plan. If the plan has been approved by the Secretary of State then his consent is required (s.15(2)). The Secretary of State may direct a local planning authority to prepare proposals for the alteration repeal or replacement of their local plan.

The plan must conform generally with the provisions of the structure plan (s.11(9)). It shall not be adopted until a certificate is issued by either the County Council or the Secretary of State that it so conforms.

Whilst it is early days to assess how well knit a development plan is resulting from the combination of structure and local plans, it is clear that there may indeed *there is* bound to be wide variation in the amount of detail and information available. The responsibility for the detailed planning lies on the District Council in their local plans. Examples that I have seen so far indicate that in many cases there will not be coherent thought out ~~road~~ <sup>land</sup> use policies for all areas comprised within the plan.

The system does not guarantee clarity. Despite the emphasis on public consultation the rights of objectors to an impartial assessment of their objection is not provided. Although there is abundant provision for review so that the plan does not become outdated whether the plan is kept up to date is a matter of will for the planning authority; I hope we shall not

hear the opportunity for review and amendment being claimed as  
as reason for preventing development on the familiar grounds  
of prematurity or else the greatest potential benefit of the  
new system will be lost and the securities of clarity and  
objectors rights will have been made in vain.