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PLANNING IN CRISIS

STRUCTURE PLANS: LOCAL PLANS: COMPENSATION

STRUCTURE PLANS: LEGAL ASPECTS & PROBLEMS

by

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STRUCTURE PLAN LEGAL ASPECTS
AND PROBLEMS

Hamlets which failed to pass the Planner's test
Will be demolished. We'll rebuild the rest
To look like Welwyn mixed with Middle West.
All fields we'll turn to sports grounds, lit at night
From concrete standards by fluorescent light ;
And over all the land, instead of trees,
Clean poles and wire will whisper in the breeze.
We'll keep one ancient village just to show
What England once was when the times were slow -
Broadway for me. But here I know I must
Ask the opinion of our National Trust ...
So don't encourage tourists. Stay your hand
Until we've really got the country planned.

That was written by John Betjeman in 1958. It was clear that already the cold fog of disillusion was moving across a bright blue sky from which the sun of benevolence had shone on those who planned the brave new world that was to follow the second of the great Wars and which was displayed in numerous brochures produced at the rate-payers' expense. In particular I recall that produced by our own Borough Engineer who overnight became the Chief Planning Officer. It was entitled "Wolverhampton of the Future" and on its cover it showed a splendid fountain. Alas, the only fountain in Wolverhampton is a rather mouldy affair which spends most of its life awaiting repair and in the meantime is used as a receptacle for waste paper and empty beer cans.

Almost the whole of my War was spent in various German Prisoner of War Camps gazing out between the strands of barbed wire at a hostile world and facing the problems of finding a meaning for four long years of enforced idleness. Through the International Red Cross there came into my hands copies of the Uthwatt, Barlow and Scott Reports and, then young and naive and full of hope, I saw framed by those strands of barbed wire, a new world in which all development would be controlled

and my generation would hand on the to next a country where almost all the uses would be in the right place and the financial reward of development would be used for the provision of such unprofitable items as the fountain which graced the front page of our local brochure. Alas, it has not been thus.

And so, inspired by Mumford, Russell and Abercrombie I returned to my office to await the summons to participate in the re-planning of an improved Britain. But no-one, who wanted me to assist in the re-planning of Britain, knocked on my office door. My clients were those who owned and occupied property affected by the proposals of the Town and Country Planning Act 1947 and usually were only concerned in seeing that those proposals werethwarted.

It is clear that those noble concepts of long ago have not been achieved in practice and that our Poet Laureate, like so many artists, has justifiably set himself up as a modern Jeremiah. For Blake's dark satanic mills we must substitute the high-rise flats, the soulless inner city and the fungoid growth of the urban housing overspill which has spoiled so many of our delightful villages where no social cohesion has been achieved between the immigrant from the urban centre and the indigenous inhabitant.

Yet the Act of 1971 requires the County Planning Authority to set out in its Structure Plan its policies and general proposals in respect of the development and other use of land in its area (including measures for the improvement of the physical environment and the management of traffic). The regulations made under the Act set out a list of matters to which the policies of the Structure Plan are to relate thereby bringing within the parameters - how I love that word! - of the plan matters of socio- and economic relevance. As a result each County Planning Authority has produced a vast Report on Survey, usually incorporated by reference in the Written Statement, full of statistics and analyses, often with computerised diagrams and full to overflowing with facts. And all this is in aid of the aims and strategies and general policies of the Structure Plan.

Indeed Circular No. 4/79 requires a 'broad and open consideration of planning problems taking account of physical, economic and social aspects.' All this to shape our lives - pro bono publico - as was written above the door of the fish and chip shop where I went for cheap sustenance in my student days!

Let us look over our shoulders. The Romans planned

their cities usually adopting a gridiron lay-out and providing baths and other communal facilities. But the Romans were conquerors and, presumably could do what they liked with their conquests. The mediaeval town grew around its church and most of its trades and crafts were such as could be carried on within the people's homes. Although the trades and crafts have largely gone, many of our towns and villages retain their higgledy-piggledy charm without in any way complying with modern standards - and God forbid that they should have to disappear. Nash built Regency London and Bath; Buxton and Cheltenham were developed without the need for Town Planning. Doubtless Haussmann rebuilt Paris without regard to socio/economic principles. It was only because of the acceptance of liberal principles and the flood of population to the towns that central governments began to impose standards of housing and other matters and Town Planning as we know it began to evolve. But whereas Haussmann in Paris, Le Corbusier at Chandigarh and Lutyens in New Delhi could doubtless plan and design according to their inspiration, today we have the Structure Plan. Soon the Local Plan will regulate further that inspiration and must likewise take into account socio/economic and 'any other relevant matters'. Must we not confess that much of our modern development, while doubtless complying with the highest standards, even those of Parker Morris, is desperately lacking in inspiration - that envied human quality that cannot be popped in a Planning Authority's pigeon hole but is capable of producing a Champs Elyssés, the squares of London and the great imperial buildings and way of New Delhi? But planning is for people - more and more people - not just to satisfy the ambitions of Napoleon the Third, the great landowners of Regency London or the BritishRaj but the masses whose democratic vote is the available means whereby they attempt to achieve their aspirations. Pro bono publico and for fish and chips let us substitute socio/economic and 'any other relevant matters'. Among those 'relevant matters' should there not be included aesthetics, artistic and, - dare I say it? - inspiration all of them irrational, and - almost by way of afterthought - 'complying with legal requirements'? Is there a genius alive with the mental powers and artistic inspiration, good taste and legal knowledge capable of analysing, absorbing, synthesising and making decisions based on so many rational and irrational considerations, while at the same time acting pro bono publico in a world of constantly changing standards? Is our system of land use control capable of expressing in terms of good Town Planning

a synthesis of rational and irrational considerations? On whose shoulders should the responsibility for making decisions rest? Within what sort of legal structure and subject to what legal restrictions should those decisions be taken?

It is right and proper, therefore, that from time to time we should withdraw from the midfield scrum and view and judge the state of the game from the New College sidelines.

Basically, Town Planning is political. It must be controlled by Government, Central and Local. It is, therefore, a matter of power, political power. Political power in a truly democratic society, rests in the ballot box. I recall attending a conference arranged by the Bow Group addressed by the then Minister of Housing and Local Government, Sir Keith Joseph. I raised a question about public involvement in Planning decisions and the right of the individual to object to unacceptable development on his doorstep. That was before the days of Skeffington. The Minister, a true democrat, raised himself to his full height and stated that once the person concerned had registered his vote in the ballot box he had entrusted his elected representatives with full power to reach such decisions as they considered best. The decision was theirs and that was the end of the matter. That was before the days of Skeffington and of Reports of Survey and Structure Plans. How on earth are our elected representatives going to absorb and understand all the facts now available to them, define the policies and relate them to the facts of a particular application when they spend the bulk of their day engaged in the mundane duties of earning a living and, having considered those facts, introduce the often irrational elements of artistic and aesthetic desirability? In their policy and decision making they are circumscribed by the need to work within the legal structure, to have regard to individual considerations - an Englishman still regards his home as his castle - and to bear in mind the fact that their decision may be rejected by the Secretary of State or his Inspector. Let us face it. Some decisions have been quite extraordinary. Some have plainly been political - the affair of Coin Street and the withdrawal of its Structure Plan by Avon County Council following a change of political control. Then there was the plundering of the Green Belt to the West of Wolverhampton by the then Minister. In his wisdom he overruled his two Inspectors on grounds of an increase in population. This was shortly before the results of the census which showed a fall rather than a rise. Too often we have seen Inspectors overruled by

Ministers on political grounds. This has happened after long and painstaking inquiries when every conceivable fact and opinion has been fully debated.

Are major policy and land use decisions being made in the right context and at the proper level? How can we be sure that the relevant facts are being properly presented to those who must decide? Sitting in at a Planning Committee is not the most assuring exercise. Nor indeed is attendance at some of the Examinations in Public into Structure and Local Plans or the perusal of the conclusions of the Secretary of State on submitted Structure Plans.

Is the Politician the proper person to take decisions that, if they are to be 'probably' correct, must take into account the matters directed by the Secretary of State and to add that touch of inspired genius that will turn the plans produced by some plodding architect into a building concept which men will see and say "That was a good planning decision"?

Before I leave this aspect let me underline the dangers as I see them by two examples. First it is becoming the policy of many rural Authorities to impose an 'essential local needs' requirement before granting Planning Permission for residential development in their areas, a policy that may not have the approval of the Secretary of State and puts people before land. This policy is often directed at preventing further immigration from nearby conurbations. I fear that such a policy will necessarily have serious effects.

It will create an artificial situation of scarcity thereby forcing up the price of dwellings within the areas to which the policy is applied. It will open the door to Planning by selection which may well lead to discrimination on grounds which have nothing to do with good Town Planning.

The second danger is that Planning Committees may have more regard to the votes in ballot boxes than to the principles of good Town Planning. Rather than lose votes they may decide that matters should be left to the decision of the Secretary of State or his Inspector and side-step their responsibilities as decision makers. This may lead too often to Town Planning by appeal, a time and cost consuming business.

In spite of the work which has been done to encourage members of the public to take an interest in Structure and Local Plans, I believe that most people are deterred because of the complex nature of the information presented to them and are of the frame of mind that

matters are cut and dried. Furthermore, I believe that members of the public have little confidence in our system of Public Local Inquiry. Certainly in the area in which I work many of the major Inquiries have resulted in Inspectors being overruled by Ministers so that many possible participants consider it a waste of time and money and have played no part in the making of decisions which have often had far reaching effects. This attitude may be due to the fact that for most Public Inquiries the Inspector is appointed by the Secretary of State and is not regarded as impartial. It is my experience that the only sure way by which members of the public may bring pressure to bear in the making of decisions is by forming residents' or similar associations. Such associations, however, usually have limited objectives and it is difficult to stir the public to participate in the wider issues of land use. Such participation is often restricted to ecological or similar groups who, unfortunately, have gained for themselves a dubious reputation because of the often radical attitudes which they adopt.

Public participation is unlikely to be encouraged in the making of Local Plans when there is no right to be heard unless there is an objection to the proposals set out in the Plan and when the Local Planning Authority are the arbiters of what proposals are to be discussed. Indeed, there must be some temptation to exclude those very matters which might arouse a substantial public debate. Too much of the discussion at a Public Local Inquiry into a Local Plan may, therefore, be restricted to the arguments of individual persons interested only in the future of their own land rather than a debate into the more substantial matters affecting the public at large and not debated at all, possibly because of their complexity.

For a society for which the pundits forecast an average working week of only nine hours at the turn of the century and for which Town Planning will have to play its part in allowing the man at ease to develop his interests and creative activities, the lack of such participation may have most serious results and the lack of flexibility which appears to be an inherent fault of most development plans may have the result that Town Planning, instead of becoming a motivator of desirable development, will become a restricted channel through which a developer will pass with dread rather than encouragement.

Yes, you will say, the elected representatives have their experts, the highly qualified professional Town Planners. After the war the choice lay between the precepts of Abercrombie or Russell. I recall cross-examining a Town Planning expert and enquiring which

school he subscribed to. 'Russell', he replied. "Then I must put it to you that you are wrong and that you should adopt those of Abercrombie!" I countered almost automatically. I do not recall the result but I do recall that a few weeks later I was instructed by a Local Planning Authority to appear for them at a local inquiry. My principal witness was the same expert but this time we subscribed to Abercrombie. It was all so very simple then and, possibly the decisions were just as right .. or as wrong as they are today.

Of course the standing of the Town Planning expert has increased immeasurably. We almost always have to engage at least one to contradict the Planning Officer and both experts speak with authority.

The expert prepares and understands the facts on which he advises that the decision should be based. Often he takes the decision. On rational grounds the decision must be correct. The estate will be laid out and constructed in accordance with the highest standards and will comply with all the imposing diagrams and statements in whatever size of print contained in the current plans. But at the end of the day will anybody throw his hat in the air and say : "Marvellous Town Planning"? It is in achieving the higher aspirations that attention must be paid to the irrational, the terms of art. The Town Planner doubtless possesses all the intellectual qualifications. Injected into those qualities there must be that subjective judgement, that 'pricking of the thumbs' which says : 'I don't know why but that is better than this .. and that is what we will allow!' But will the members of the Planning Committee or the Secretary of State see and acknowledge that rightness of his recommendation? Instead, will not the expert play safe and recommend what to him is second best but which he knows will pass through his Committee of amateurs or the Secretary of State himself? And at the end some learned judge in London may decide that the whole thing is illegal because it falls outside the legal structure.

Having struggled to read technical publications such as Margaret Roberts' "An Introduction to Town Planning Techniques" I assume that provided the correct formula or analysis is adopted it should be possible to take almost all land use decisions without the intervention of the human intellect thereby producing the computer planned planning unit. But I fear its lack of humanity and its cold reason.

Now let me introduce the public and its opinion. I believe that public opinion still means a great deal when it takes the trouble to express itself for example through residents' and similar forms of

association, even through those strange bodies that all of us have to represent from time to time and which rude colleagues of mine refer to as the Birmingham Birdwatchers' Club. I have no doubt that the vast majority of people in this small island accept that some form of land use control is vitally necessary if life is to remain bearable. I recall the outcry that led to the passing of the Restriction on Ribbon Development Act of 1935 and it is right to remember that the first of the great Town Planning Acts, that of 1932 had just begun to operate and to be accepted when war broke out. I believe that the concept that an Englishman's home is his castle has at last begun to die and that the gross infringement of private rights of ownership stemming from the control of land use is acknowledged to be part of our modern concept of society. But can the public really make Town Planning decisions? Can it cope at all with the vast literature produced by authority and thereupon exercise its power of judgement? Usually it can only make its opinion felt when the development has taken place or through associations such as I have mentioned. It can ask for a building to be listed or trees preserved. As individuals it can object to development on its doorstep. It can to a small extent introduce questions of taste, habit and convenience. Attempts to obtain the opinion of the public on Structure and Local Plans have been disappointing and comment is usually slanted in some way or other. It is rare that the Authority obtains a 'broad brush' treatment. Nevertheless, at the end, it is public opinion that must determine whether it has been well or badly done by. The wheel of fashion rotates. Thirty years ago the Victorian plaster casts that decorate the ceilings of my house were 'out'. I spared them. Today they are admired. The small villages of the Auvergne where I spent part of my holiday are probably the local planner's nightmare. They are my idea of heaven. Perhaps in years to come we shall find some strange beauty in the tower block.

Is it possible to produce Structure and Local Plans which are comprehensible to the layman and, therefore, capable of full public debate? Is Town Planning the sole preserve of the professional Town Planner, is good Town Planning far too complex a matter to be left to the amateur? Are members of the public the best arbiters of what is good for them? Bearing in mind that the wheel of fashion revolves inexorably, should public taste at any one time be taken as the final arbiter of what is good or what is bad?

Faced with the complexity of the planning structure what can a poor mortal do?

There is one thing he can do. If he feels strongly

and "expensively" that some proposal is wrong both in Town Planning terms and because it falls outside the legal structure, he can ask to appear at the Examination in Public or take his objection to the High Court. Of course he may not be invited to the Examination in Public. Alas, the tendency has been to restrict debate and it is often difficult to discuss at an Examination land which has not been included for development. Nevertheless it has been accepted for many years that proposals affecting the rights of individuals should be the subject of adversarial challenge. This is the point at which the lawyer or pseudo-lawyer emerges. As I tell my students : 'Town Planning was all right until the lawyers began to interfere.' And that reminds me.

In about 1947 just when I had re-emerged into civvy street, a learned gentleman from London - I believe he was a Civil Servant - visited the Wolverhampton Law Society in order to explain the Town and Country Planning Act 1947. I believe that the members of the Wolverhampton Law Society had not by then appreciated that there was a Town and Country Planning Act of 1932 let alone of 1944. Their fears were almost immediately set at rest because the speaker commented that he could not think why he was talking to a lot of lawyers because there was no scope for lawyers when dealing with Town Planning and, in particular, the system of planning control set out by the act of 1947. So far as I am aware only one member of the audience threw an imaginary hat into the air - and he will be nameless.

As I see it, the role of the Lawyer falls under two headings. First, he must ensure that what is being done lies within the structure of the law. In other words, that it is lawful. This is a matter of legal interpretation. Little did the gentleman from London appreciate the wide areas of disagreement which could be found among the many sections of the Town and Country Planning Act 1947, the statutes which have followed it and the Orders and Regulations made under them. Unsuccessful in finding the reference, I recall reading the judgement of a greatly respected Lord Justice to the effect that having sat on the Bench for many years and determined a wide range of cases, he had come to the conclusion that the Law relating to Town Planning was now the most complex and difficult. Yet the task of interpretation extends from consideration of the statutes ranging from the Town and Country Planning Acts themselves to the Caravan Sites and Control of Development Act 1965 and doubtless to the new Countryside Act, to Orders such as the General Development Order, the numerous Regulations and Circulars, to the Structure Plans and Local Plans and finally to the decisions of the

Secretary of State and his Inspectors and to the interpretation put on them by the Courts. I need hardly stress the numerous fine differences that exist. I recall that as a result of a decision which I obtained, I believe that the General Development Order was altered in order to make it clear that a shop which sold motor cars was not a shop for the purposes of Class III of the General Development Order and, therefore, joined that strange set of uses which includes shops where pet foods and tripe are sold. With such fine and often extraordinary distinctions we enter what must surely be a Lawyer's paradise.

Stemming from the Lawyer's role of interpretation, we come naturally to the adversarial role in which it is his task to question, analyse and rationalise the information before him and this he does by adversarial challenge. Such challenge is no doubt appropriate in the Courts and in the interpretation of statutes, orders and regulations. Is it appropriate, however, to Structure and Local Plans? He must ask: 'What precisely do you mean by this?' or 'How do you justify your statement that ...?' A good Town Planning policy may be lost because the Officer given the task of deciding it is not a good witness.

As I have made clear, however, the principles enunciated as part of the 'science' or 'art' of Town Planning are made as a result of subjective judgement and so often and like works of art appear to be irrational when subjected to challenge. As a result, Town Planning Inquiries are often unsatisfactory, and the professional advocate feels that he is indulging in some form of shadow-boxing in that he so often obtains no answer at all to his line of questioning. One can but wonder at this point how well Christopher Wren would have stood up to cross-examination on his plans for the re-building of the City of London.

Nevertheless, debate is one of the basic methods by which decisions affecting the Government of this Country are made and, while Lawyers have attempted to mould the procedures of the Local Inquiry into those applicable to the Courts of this Country, I believe that it was clear from the initial concept introduced by the early Town Planning legislation and extended into the Examination in Public, that the procedures to be adopted should be much less formal, more wide ranging and that adversarial challenge should give place to debate. Indeed, the procedures which have been evolved for the Examination in Public reinforce that view in that only those who are invited to participate may do so. This tendency to restrict the debate is evidenced by the Local Government, Planning and Land Act, 1980 and the Regulations made under it.

As a result, the individual and usually his advocate

come away from the Examination in Public, and in many cases, the Public Local Inquiry, feeling that they have not had a fair opportunity of challenging the proposals which affect them and that little rational argument in support of those proposals has been produced and analysed in any depth.

Nevertheless, ever since the Skeffington Report considerable service, albeit possibly in the nature of lip-service, has been paid to public participation in planning matters. It is necessary to face the fact, however, that by the time a Structure Plan or Local Plan reaches the stage of examination in public, the odds are stacked against the individual who wishes to challenge it. Most people are, therefore, deterred from taking an active interest in the Plans which may well have far reaching and serious effects, because, not only are they deterred by the complex nature of the information presented and the difficulty and expense of producing different factual analyses, they are also of the frame of mind that matters have been 'cut and dried'. I have heard it stated by a Local Authority official that the sole purpose of having a Public Local Inquiry into a Local Plan is to enable members of the Public to 'let off steam', there being no possibility of any alteration being made to the Plan.

Yet we face what must be one of the greatest technological revolutions in our history. We stand only at the threshold of the computer age, the age in which it will be possible to impose on a piece of material no bigger than my thumbnail one million individual circuits and which small piece of material will dictate that by the end of the Century a vast number of men and women may never be employed as we conceive employment today.

How are we to ensure that the decisions which will so vitally affect us as the technological revolution gathers pace, are debated at the correct level and those decisions are the right ones? Do we need the edifice which has been constructed during the last forty years? Are we prepared to take off the Town Planning brakes as is being done in the case of the Enterprise Zones? Has the cost of the preparation of the Structure Plans and, now the Local Plans, been justified? Do they exist for the good of the public or to satisfy some urge, whether political or otherwise, of some party, organisation or creed, which sets its face against any thought of public or individual challenge?

Of one thing we can be certain. A legal structure must be preserved. That is the duty of the Lawyer. But to what extent should the legal structure

circumscribe the principles by which decisions affecting the future use of land are made? Is it possible to develop a legal structure which will not act as a straight-jacket for the Town Planner with the touch of genius so often lacking both in public and private practice?

In spite of all the criticism that has been levelled at our system of land use control, we have much to be thankful for. It is impossible to think of this small country continuing without some form of development control. Looking back to those wartime reports and the Act of 1947 which stemmed from them, there is little doubt that the system which was then initiated, has done much to encourage and preserve tolerable conditions in this land. Clearly a system of land control is justified and those whose obligation it is to exercise that control must look ahead as far as reasonably possible. That is the Art of Town Planning. That Art must be exercised in the light of the fullest possible range of knowledge. It is no longer within the capability of the individual man to achieve a proper synthesis of that range of knowledge. Indeed, each of us struggles to be an expert in his limited sphere of knowledge leaving what is outside to another 'professional'. It is, however, the duty of a better informed public to involve itself more and more in what is involved in Town Planning. The public surely must accept more and more responsibility as the media makes it possible to bring before more people than ever before the problems that currently face our society. As leisure time replaces hours at work advantage should be taken of educating and involving the public in decision making and creating a condition whereby members of the public appreciate their responsibilities in the field of Town Planning.

In the meantime, the current system of Structure and Local Plans is probably the best which can be operated in that it would be a waste of money and time to work out any other system. Whether the system will work must depend to a great extent on the integrity, capabilities and imagination of the professional Town Planner working within a system which is sufficiently flexible to adjust to the changing needs of the time but which complies with the requirements of the law which in itself gives reasonable protection to the interests of the individual who in his millions makes up the population for whom Town Planning, whether in crisis or in chaos, exists. May it remain in crisis because, by doing so, it will continue to evolve and to be the subject of the sort of criticism of which you have heard so much while standing on the sidelines. I hope that we shall all return to the scrum with a somewhat clearer idea as to the state of the game.