

JOINT PLANNING LAW CONFERENCE

**MATERIAL CONSIDERATIONS
IN TOWN AND COUNTRY PLANNING DECISIONS**

**THE CONSEQUENCES OF THE GREEN ISSUE
AND THE EUROPEAN DIMENSION**

by

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**SATURDAY 15 SEPTEMBER 1990
NEW COLLEGE, OXFORD**

The Law Society
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The Consequences of the Green Issue and the European Dimension

Sir Hugh Rossi MP

1. When the Environment Committee was constituted in December 1983 we decided to carry out inquiries into matters which were receiving little Ministerial or Departmental attention and needed stimulation. One of our most significant early reports was on the subject of acid rain. We started this inquiry in 1984, when the official UK position was that there was insufficient known about sulphur dioxide emissions and their effects to justify spending large sums of money on reducing them. We recommended that the research be done (which the Government accepted) and that Britain join the 30% Club which required an undertaking to reduce sulphur emissions by 30% by 1993 taking 1980 as the base year. This was rejected. In 1986, as the results of the research began to emerge, the Government conceded the need for a major programme of reductions in emissions, and the CEGB announced its intention of retrofitting three power stations with flue gas desulphurisation equipment by the end of the 1990s at a cost of £600m and subsequently increased to six power stations at a total cost of £1.8 billion (1989 prices). The newly formed Electricity Companies have resiled on the FGD programme in the run up to privatisation. This is another story.

2. In the last seven years we have covered a fairly comprehensive list of environmental issues including Green Belt and Land for Housing (June 1984); Acid Rain (September 1984); The Operation and Effectiveness of Part II of the Wildlife and Countryside Act (January 1985); Radioactive Waste (March 1986); Planning:

Appeals, Call-in and Major Public Enquiries (July 1986); Historic Buildings and Ancient Monuments (February 1987); Pollution of Rivers and Estuaries (May 1987); Air Pollution (June 1988); Toxic Waste (March 1989); Contaminated Land (January 1990) and the Pollution of Beaches (July 1990). We are currently continuing our inquiries into Indoor Pollution, Environmental Issues in Northern Ireland and Tropical Rainforests. All these reports were unanimous on an all party basis and have attracted a great deal of favourable media attention and interest on an international scale. The reports have been well received in informed environmental circles and have undoubtedly influenced and in some cases shifted Government policy.

Green Issues

3. Two main trends have emerged as a result of our work; the one being obvious, the second less so. The first is that the material resources of our planet are finite not infinite and the human race cannot expect to go on using them into the millennium as though there is no cost to pay. Secondly, our physical environment is also finite and we cannot continually throw onto the land, into the waters or the atmosphere what is surplus to our needs without putting at risk delicate balances in nature on which all life systems depend. So we have learnt that if we burn too much fossil fuel or cut down too many trees, we will upset the temperature and climatic conditions of the planet. If we create new chemicals and disperse them into the atmosphere, we may find that they have effects we did not expect, such as destroying the ozone layer which protects us from radiation. If we extract minerals which have been sequestered in the Earth's crust and do not dispose of them carefully we may poison living things both on land and in the water including ourselves. If the rapidly expanding human population of the world striving for ever better standards of living does not change the way in which it treats the Environment, it will irretrievably damage the Earth, to its own detriment as well as that of the natural world.

4. To husband the Earth's material resources we have to learn and make a habit of re-using or recycling them. Equally to stop damage we have to reduce our waste streams and learn to take care with those that remain.
5. The problem is that the environment has been a free commodity into which we have spewed our wastes with impunity. Pollution does of course have costs, but it is not the polluter who always pays the bill.
6. Take atmospheric pollution, the costs of acid rain or acid deposition are reduced crop yields, damaged trees, eroded stonework, destruction of freshwater life and respiratory illness. This pollution is to some extent absorbed, diluted and dispersed by the natural environment and also spread across vast territories, whose people may not even realise they have been affected until a threshold or critical load is reached. Pollution does not respect national boundaries. Southern Sweden first experienced the effects of the acid rain by the loss of fish life in 18,000 out of 20,000 lakes contributed to by our tall chimneys policy. In Britain because of our tall chimneys, prevailing winds, and the buffering quality of our calcium rich soil, ill effects were not apparent until scientific studies and research were directed at the growing effects of atmospheric pollution.
7. Next take water pollution, too much nutrient in our rivers and streams or sewage discharges can lead to eutrophication of receiving waters whether inland or coastal encouraging the growth of toxic algae poisoning water supplies, swimmers and shell fish. The polluters may be farmers intensively fertilising their land, breeding cattle, or housewives using phosphorous-rich detergents. This is quite apart from dirty beaches to which we all make our contribution.
8. As regards land, our misuse of it despite the law of nuisance, Rylands and Fletcher, and the Planning system has led to contamination and future problems on a scale

that we have yet to discover. We have had our Loscoe, Derbyshire where migrating gas from an old landfill site exploded in an adjacent house, permitted by the planners. Evidence is emerging of groundwaters poisoned by leachates from industrial and landfill sites. Our Love Canal and Lekkerkerk may be just around the corner.

9. Experts have been warning us of these and other risks to the environment for decades but public awareness has suddenly exploded just in the last two to three years. This is leading to a strong pressure for change. The DOE carried out a survey of attitudes to the environment in 1989 and found that 30% of people thought that environmental issues were among the most important problems for Government (second only to the health service in public concern and higher than for unemployment, mortgage rates, inflation, or law and order). People have become much better informed about environmental issues and particularly through voluntary organisations become very adept at putting pressure on industry and Government. Membership of environmental organisations, has grown consistently, most particularly for Friends of the Earth which has 65,000 members compared with just 1,000 in 1971. The National Trust is still the largest environmental organisation with a membership of over 1,600,000. The public have also demonstrated that they have considerable power as consumers in preferentially purchasing "environmentally friendly products" and have effectively, driven aerosols using CFCs as propellants off the retailers shelves.

10. We are beginning to develop the means to prevent the over-exploitation of the environment but it is not a simple matter, technically nor indeed politically, particularly since controlling pollution means not only considerable expenditure which will ultimately fall upon the consumer and taxpayer but also could imply a need for changes in personal life styles, such as in the use of the motorcar or energy generally. Control does not just involve setting up pollution agencies or passing legislation. We have to set up comprehensive new systems of environmental

monitoring, formulate and enforce international agreements, develop a much better understanding of ecology and adjust market or other mechanisms which encourage polluting activities. Safeguarding the environment is not just about an extra ten pollution inspectors or some new regulations reducing emissions, but about including safeguarding the environment as a priority into all decisions which affect it. This ranges from the shopper choosing a washing powder, to the industrialist deciding where to send wastes and to Government taxing consumer goods.

11. **Industry** has also changed its attitudes. There is the obvious selling line that a company's products are greener than those of competitors. More significantly, some of the large multi-national companies have been at the forefront of developing techniques of waste minimisation and clean technologies, improving energy efficiency, as well as marketing safer alternatives to polluting products. Methods which companies have adopted to improve their own environmental performance include developing indices of pollution so that targets for reduction can be set and progress measured, environmental and waste audits and the formulation of corporate environmental policies. Companies which have set out to behave more responsibly to the environment have found unexpected benefits in new business opportunities and improved efficiency.

12. **Government** has reacted rather more cautiously. However the Environmental Protection Bill now passing through Parliament will greatly extend control over polluting processes and waste disposal sites. The new Act will establish a new system of integrated pollution control over emissions to land water and air within a single framework. Authorizations will be required based upon "best available techniques not entailing excessive cost" (BATNEEC) to prevent or minimise the release of the most dangerous substances and to render emissions harmless. These authorizations will be issued for a fee reflecting the degree and toxicity of the substances released reinforcing the principle that the "polluter pays" and giving incentives to reduction of emissions. Additionally, producers, carriers and ultimate

disposers of waste will be placed under a new statutory duty of care, breach of which will amount to a criminal offence.

13. A broader consideration of how environmental protection can be included in other aspects of Government policy should be published in the White Paper on the Environment in the autumn. There are encouraging signs across Whitehall of environmental initiatives from MAFF sponsored "environmentally sensitive areas" and other schemes to encourage farmers to take more account of nature conservation to Department of Industry support for environmental technologies.

The European Dimension

14. The dramatic change in Britain's attitude to the environment should not be viewed in isolation. In many ways Britain has been following a trend set by Europe. In order to avoid unfair competition and to safeguard the quality of life, the European Community has been involved in setting and harmonising environmental legislation in member states since 1973, although this was not part of the original Treaty of Rome. The environment has been one of the most prolific areas of Commission activity - in all more than a 100 pieces of environmental legislation have been adopted in fifteen years. The principles of Community environmental policy are set out in the Four Action Plans which have set the agenda. These include:

preventing the creation of pollution at source (rather than counteracting effects)

taking into account environmental effects at the earliest possible stage in planning and decision making

making the polluter pay for damage and pollution abatement (rather than giving subsidies)

integration of environmental policies into other sectors such as agriculture and transport.

Planning

15. The planning system has its roots in urban design and the garden cities movement. It has been primarily concerned with ensuring the orderly use of land and with safeguarding amenity. To some extent this had the effect of protecting the environment but indirectly rather than directly. The prime purpose of planning is to control land use and development, not to safeguard the environment. At the same time the pollution control system implemented by local environmental health officers, waste disposal officers, HMIP and the National Rivers Authority has arisen largely out of a concern with public health. The overall result is a hotch potch with no single authority having the overall responsibility of protecting the environment. When we were taking evidence from DOE officials during our contaminated land enquiry it was quite clear that their thinking was entirely coloured by the considerations which need to be taken into account when an application is made to change the use of land. Then and then only is thought to be given to the condition of the land and its fitness for the proposed development. Nothing was required under planning law in respect of contaminated land which was or might in the future present a danger to the environment. Similarly Public Health Officers could only act when a danger became apparent - usually when damage was actually being caused.
16. The consideration given in planning to environmental considerations has broadened in recent years because of
 - i. longer and more searching public inquiries, for example Roskill, the Sizewell B inquiry and (dare I mention it) the Archway Road

- ii. environmental assessment regulations, requiring environmental impact assessment of a specified list of large developments
 - iii. pressure from councillors and the public (when environmental conditions are imposed this can sometimes cause overlap with environmental health or waste licensing powers).
17. However there are still gaps in environmental decisionmaking. Again, during our inquiry into Contaminated Land we came across many examples which illustrate this. We visited the site of an old Edwardian gas mantle factory in Essex. The site had been cleared when the factory closed but the soil was contaminated with radioactive thorium used to make the gas mantles incandescent when lit. It changed hands rapidly over a period of several years and was used mainly for storage purposes. The site was fenced and was not perceived to constitute a public health risk. The local environmental health officers therefore had not powers to enter and investigate although in practice children from a school abutting the other side of the site had for several generations played on it. The planning authorities had to wait for a planning application on the site when their greatest concern became site density and road access. The developers knew of the problem but were dismayed when they took soil samples and found the extent of the radioactivity. How they found somewhere to dispose of the contaminated soil is another story but the exercise cost them in excess of £11 million.
18. We recently visited a former Courtaulds factory site in Northern Ireland where toxic wastes had been buried on site. There is nothing to prevent the owners selling on the land to someone who has no idea that the contamination was present. He is now faced with possible leachates from the site into Belfast Lough and no resources to ensure clean up. On another site Dupont had been caught with just such a problem, and being an environmentally responsible firm of some standing, are

paying £15 million to clean up tar lagoons found buried on the site, although at present under no obligation to do so until leakage actually happens.

19. We therefore recommended in our report on contaminated land that local authorities should be required to prepare registers of contaminated sites so that we could be sure that the presence of contamination would be taken into account by planning authorities and to give purchasers information about the potential liabilities they were incurring. This has been partly accepted by Government and is being incorporated by Lords amendments to the Environmental Protection Bill. The requirement will be for district councils to compile and maintain registers of potentially contaminated land but not to make entries on the local land charges register.
20. Another recommendation which has not been accepted is that the *Caveat emptor* rule should be altered so as to oblige a vendor of land for development to disclose any former use of the land within his knowledge which may have led to its contamination. From the way in which the Government has responded to this recommendation it would seem it was persuaded by our argument and evidence to accept it. However, the Government felt it could not fly in the face of the more recent report of the Law Commission Standing Committee on Conveyancing rejecting any change in *Caveat emptor*. So developer-purchasers will have to rely upon longer and longer preliminary enquiries and warranties in contracts for sale, the provisions of the Misrepresentation Act 1967, and the professional indemnity policies of their solicitors and surveyors.
21. In the absence of responsibility on the part of an owner of land to disclose or do something about contamination of his land whether historical or caused by him, greater and greater burdens will fall upon public authorities, whether planning or public health, in the face of growing public concern. The requirement for environmental assessment should help but its application is limited and planners

may not have the appropriate skills to use the information provided. However we are at the beginning of a new era of environmental legislation - the Bill is the first not the last word and there will be many more changes in the years to come.

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