

JOINT PLANNING LAW CONFERENCE

THE DEVELOPMENT PLAN - MASTER OR SERVANT?

KEYNOTE ADDRESS

by

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FRIDAY 18 SEPTEMBER 1992

NEW COLLEGE, OXFORD

The Law Society
The General Council of the Bar
The Royal Institution of Chartered Surveyors

Introduction

1. Chairman, may I first just congratulate you and your committee on a first rate and stimulating programme. From a glimpse of the papers you are to hear, I can see a thorough examination - from a variety of perspectives - of a lively topic. Today I will start the ball rolling with a comprehensive review of our implementation of the development plan led planning process. This is timely, as we approach the first anniversary of the implementation of Section 54A.

The development plan

2. The development plan - master or servant? That is the question your conference title poses. And it is a well chosen title. We have all heard of master plans, but perhaps not servant plans. But the answer to the question is closer to the latter. For the plan-led system will surely fail if development plans are perceived to be master plans drawn up by social engineers who put themselves into a position of knowing what is best for the community without consulting them, or listening to those who will make the development happen. What we need are development plans which are the servant of the community, and which reflect their aspirations for the shape and future development of the areas where they live and work. Those plans should in turn reflect the overall approach to land use and the economy that is the Government's policy.

3. We all need to know where we are going. We all have plans. There are our ambitions - what we should like to be doing in 10 years from now. There are also contingency plans - alternative plans to fall back on, when it becomes clear that the original vision was too ambitious. Then of course, our plans need to take account not only of where we

want to see ourselves in the future, but how we are going to get there - how with a consistent approach we can make all those day-to-day decisions on the way to our destination.

4. My simplistic description of ambitions, contingency plans, and consistency in day-to-day approach to events is capable of translation into any business or public sector activity. In the land use field, the role of the development plan is threefold.

5. It sets out the vision that the local authority has for its area. That must be a realistic vision, and it must fit with the Government's approach for the country as a whole. Vision alone cannot sustain a plan; it must be supported by a detailed analysis of requirements, capacity and constraints.

6. The plan must provide for contingencies. The plan will be no use if it can be derailed by a few unexpected events early in its life. Always expect the unexpected. One of your papers explains how the continental zoning practices deliver flexibility; that should be interesting to those of you who argue that even Section 54A goes too far in the direction of prescription.

7. Finally, the plan must demonstrate how it will be applied in day-to-day development control decisions, since those are cumulatively what will deliver the original vision.

8. So, I see the plan as a clear guide to decision making, a guide to be adhered to unless very good reasons emerge for doing otherwise. The plan is the safeguard, to guard against arbitrary decision taking. Without it, every decision would be at the whim of individual council members - or individual Secretaries of State on appeal or call-in. Those who look to the local authorities' plans to inform their own decision taking would be lost. Without those plans, how would the water undertaker know where to put in new infrastructure? How would the housebuilder know where housing developments are reasonably likely to go ahead?

The role of the plan

9. New buildings and other changes in land use are necessary to provide the ever increasing number of households with homes, and to sustain the investment needed to underpin the economy. Without the control and direction the planning system gives, we would have a haphazard pattern of development that would damage the environment, and undermine local economies. Such a free for all would certainly not serve the interests of the community as a whole. At the centre of our control system lies the development plan - not as a prescriptive rulebook, but as an authoritative guide. In the narrow sense, its implementation can only be through the development control decisions it influences. But, it is the most influential of the various plans of different types drawn up by local authorities. All the other activities of those authorities in their enabling role cannot fail to be influenced by a persuasive development plan: but authorities should not be tempted to use the development plan to set out their corporate policies for all these other activities.

10. The role of the plan has changed over the years as we have adapted the process to suit the priorities of the age. In the fifties and sixties, the local authority was dealing with other public sector agencies within a national economic plan. Now we see the local authority standing at arm's length from the range of privatised infrastructure providers, who in turn are subject to duties to respond to developers in return for appropriate financial considerations. Such clear financial arrangements will help bring more economic efficiency into decision making.

11. We intend to explore this further with research on developer contributions to infrastructure costs of various kinds - an idea which might be capable of bringing more fairness to planning gain. You might also have seen that the Department of Transport is proposing a similar approach to Section 278 agreements in some circumstances, and we will be interested in the considered views of those who could be

affected. Our approach to any new legislation must be a cautious one. We were not ready to rush proposals on developer contributions into the last planning Bill. And we will not proceed without a full debate of the issues.

12. Whatever our approach on this topic, the task of local authorities in plan making in the nineties is very different from the fifties and sixties. It needs to recognise the new role of the local authority as enabler rather than service provider. It needs to be guided by, and in turn to guide, the separate plans of those who provide infrastructure - and here I mean not only water and sewerage undertakers, and public transport businesses, but also those who operate other services such as shops and educational establishments.

Direction of plan making

13. What should be the overall direction of that plan making today? Some people are saying that the planning system should secure sustainable development above all. Their view is that the system is designed first and foremost to provide environmental control. Let me make clear that the Government is fully committed to the concept of sustainable development in the global context, and Britain is committed to working towards it in the international arena. The decisions we take at home must also relate to global objectives, and it is right that we should respect those objectives in our planning decisions. Since they are the immediate basis for guiding planning decisions, there is clearly a need for our development plans to respect sustainable development. But, these are development plans; we must not be tempted to examine each decision to see whether every aspect of it is individually "sustainable". Land is a finite resource. We must look forward to see the overall effect of all our decisions on that resource, so that we hand it on to our children and grandchildren in good order. I am sure that our understanding of the sustainability principle will increase over the next few years, as a result of our increasing knowledge.

14. In all of this we must remember that we will end up with the environment that we can afford; we need growth to underpin many of the environmental gains we want to see. Particularly at present, we need the planning system to take a realistic approach to economic regeneration. Just as PPG1 restates what some call the general presumption in favour of development, I say that the planning system as a whole, and development plans in particular, also fail in their function if they unreasonably prevent, delay or inhibit development. As the White Paper, This Common Inheritance, put it - the challenge is to integrate economic growth and environmental good sense. Without the first we shall not be able to afford the second.

15. But while the context has changed from post-war reconstruction to sustainable growth, the development plan must still play the primary role it always has - to provide a basis for effective and consistent development control decisions, and to give owners and local people the certainty they need about the scope for development as it would affect them.

Reviewing the role of the development plan

16. In a series of consultative documents in the late 1980s the Government took stock of the role of the development plan. After considering various approaches, we concluded that legislation was needed if plans were to become more effective in their functions. The result was the Planning and Compensation Act 1991 - almost all of which is now in operation.

17. One problem the Act was intended to tackle was the slow and cumbersome procedure in development plan preparation. Putting responsibility for the final stages of structure plans into the hands of counties is intended to result in more up-to-date plans. We will still make our input to these plans; by objection, by direction to modify, and by call-in if absolutely necessary. Those interventions will be made in a timely way. We are confident that most counties will soon

adapt to the new arrangements, and maintain the up-to-date strategic framework that local plans need. The first two EIPs under the new system - in Avon and Leicestershire - are about to open.

18. For district wide plans, the streamlining of the plan procedures may not deliver an immediate increase in the speed of the process. This is because the improvements in the Bill may be offset by the demands of greater public interest in plan making. Only when the first round of plans is in place will the new arrangements enable plan review and amendment to proceed much more readily than at present.

19. We are keen to get full development plan coverage as soon as possible. The results of our survey, published a week ago, show on 10 February, only about a quarter of authorities had district wide local plan coverage. By the end of 1996, we expect substantially complete plan coverage.

20. Minerals and waste plans look more difficult. I sense that many counties are reluctant to start work on the new waste plans the Act requires until they are more certain about the role of the new environment agency. We recently published a consultation paper showing how the new waste planning arrangements will work. We see a clear continuing role for the new waste local plans; I hope that in our next survey we shall see more evidence of counties turning their attention to this requirement of the 1991 Act.

21. There have been criticisms of the length of time local plan inquiries take. These stemmed from the cases in Cambridgeshire. We are keeping the position under close scrutiny. Long inquiries are expensive for authorities; they are expensive for participants; they delay certainty in development decisions. We will be running a research project over the next six months or so, to analyse the time devoted to particular aspects of plans. But we must learn to live with some lengthening - given their importance. Even for district-wide plans, the current average is still less than 8

weeks.

22. Meanwhile, I have an immediate plea for all participants. Don't seek to bog down the inquiry with details that are more appropriate to planning applications. I understand why the interests of clients must be protected. But, they can be protected through strategic provision. And we should remember that the purpose of the inquiry is to hear the legitimate objections relating to the plan. Objectors may put forward alternative approaches, by way of objection to the plan; but they should bear in mind that the Inspector's recommendations must leave the plan a coherent and consistent whole, in general conformity with its parent structure plan.

23. The Act will bring about one of the most intense periods of forward planning we have seen. Our target is to have full coverage of development plans, covering strategic and local policies, so that there is a plan to guide every development control decision. In this way decisions would be plan-led, as we said on a number of occasions when the new legislation was debated.

The plan-led system

24. It was not enough just to say that planning decisions should be plan-led. During the passage of the Bill, we started to face a series of amendments designed to strengthen the role of the plan in every decision.

25. There were difficulties behind the alternative approaches promoted in the amendments. But, the arguments behind the amendments were more compelling. If we were serious about elevating the status of the plan, why not put that on the face of the legislation? Faced with persuasive argument in both Houses, we decided that there must be some way of strengthening the plan through amendment to primary legislation, as distinct from policy. The result was Section 26 of the 1991 Act, which (as Section 54A of the 1990 Act) neatly bridges the development plan provisions in Part II and

the development control provisions in Part III.

26. The new section, and thus the new approach to decision taking, was commenced 51 weeks ago. Despite the views expressed in some quarters, we believe it does mean rather more than looking at the plan first. The full import is still a matter for debate. I am sure it will be mentioned here a few times! It has certainly been reflected in the decision taking by Inspectors and by the Secretary of State. Policy guidance on the way the Government wants to see the new section working was provided in the revised PPG1, earlier this year. Now we are starting to see decisions by the Courts.

27. Anxious to get its name on the first Section 54A case, Devon County Council suggested that an Inspector had not taken into account the new policy approach in a decision taken after Royal Assent, but before commencement. The County argued that the new provision was designed to reflect the Government's clear and current policy; that policy ought to be reflected in the decision, even though the law had not then been amended. The Court was persuaded that the new Section could not apply to decisions before it was brought into force.

28. This was a minor skirmish. The lists of grounds of appeal to the High Court in many cases quote the new provision. There will be much material for the legal commentators among you for some time to come, as the Courts consider Section 54A without the new PPG1, and then finally the full package of legislation and policy guidance now in place.

29. One interesting issue which has arisen concerns the situation where the material development plan policies point without exception to a refusal of permission, but where it is clear that to allow the proposed development would cause no demonstrable harm to interests of acknowledged importance. How does Section 54A influence that position? Is the absence of harm a consideration of such weight as to indicate a decision otherwise than in accordance with the development

plan? I feel safer leaving this as a topic for exploration. But, as a clue, I do just wonder whether the plan concerned could still be regarded as up to date if no demonstrable harm would come about from going against it.

Objectives of the plan-led system

30. Let me return to the safer ground of political, as distinct from legal objectives. How will we tell if the plan-led system is working? We want planning decisions to conform to plans. But these plans must be realistic, and provide for choice, flexibility and competition between developers. Some draft plans will have to change to reflect that. Once they match up more closely to national policy concerns - whether social, economic or environmental - we can be more confident of being able to support on appeal local authority decisions that accord with the plan. So, in areas where plans reflect our current policy priorities, I would expect to see fewer successful appeals.

31. In turn, if there are fewer successful appeals, I would expect there to be a greater reluctance for professionals to embark on the appeals course. The major shape of development in a district will therefore be determined earlier in the process - as the plan is prepared. This underlines the importance of public participation. Many of you have recognised the need for this, and are acting accordingly. I include the CPRE in this; they have found the resources to scrutinise every plan against their own recipe of ingredients.

Intervention in plan preparation

32. The increased interest, and increased numbers of objections, pose a management challenge to local planning authorities. That challenge will not be made easier for them by the additional scrutiny of local plans by my Department - compared with previous practice. I think that some were surprised by our line in paragraph 29 of PPG1. If the Secretary of State does not intervene, when he has the

opportunity, users of the plan can take it that he would be content to give that substantial weight on appeal. In particular, if he does not intervene where there is an apparent conflict with planning policy guidance, then he can be taken to be satisfied with the justification for the local approach. Of course, that does not prevent objections being made by others on the same point, and it does not in any way tie the hands of the planning authority when it comes to consider the need for modification.

33. Paragraph 24 of PPG1 places the onus on the Department, through its Regional Offices, to intervene where necessary. That can be at the initial consultation stage, when we convey our comments to the local authority concerned in an informal way. Where problems remain - in particular unjustified conflicts with national policy guidance - the authority can expect objections.

34. All this has meant a substantial input of resources in our Regions and at Headquarters. We have been able to do this by some increase and reordering of staff priorities. Our Regions have the same task as all of you - of absorbing all the new policy guidance flowing out of our review of PPGs. And they are charged with the task of moving regional guidance forward. They are coping well with all these demands. Other departments - Transport, MAFF and DTI - are carrying out similar scrutinies of plans. All of this amounts to a substantial commitment to the operation of the planning system.

35. The scrutiny is leading us to make many more objections and observations on draft plans than previously. We are not shouting that from the rooftops. We prefer to work with authorities to resolve any difficulties. Number crunchers will nevertheless be able to deduce that the average number of objections per plan was 3 before February this year. Since then the number has increased to 18. In the first 4½ months of the new system we made over 1,800 observations on consultation drafts, and some 900 objections. We also made 2

directions to modify. This is a very misleading presentation. Sometimes a number of objections are needed in respect of one policy approach. We have no target. Our aim is to ensure that plans are consistent with national policy guidance - or that any differences are clearly justified.

36. What happens if the authority fail to make the "appropriate" modifications? As other potential plan users, we look with interest to see the result of our own interventions in the local authority's plan. At this point, perhaps I should stress the role of the Inspector.

37. When holding a local plan inquiry, the Inspector does not represent the Secretary of State. We reserve the right to appoint the person for this task to ensure standards of objectivity, as well as openness, fairness and impartiality. Of course the Inspectors are going to respect national policy guidance in the recommendations they make; they know that such guidance must be taken into account in plan preparation - as a matter of law. But their recommendations are to the local planning authority. That authority must decide how to respond to those recommendations; and only then does the Secretary of State come into it. He must satisfy himself that there is no further need for intervention, either by a direction to modify or by a decision to call-in all or part of a plan. We shall use these powers where it is clearly justified. But we expect to do so sparingly. Our figures show that well over 90% of Inspector's recommendations are accepted by the local authorities concerned. No doubt others disappointed with the draft modifications will object, and lobby Ministers to intervene. We shall treat each case on its merits.

Policy interventions

38. What sort of policies are causing us difficulty? For a start there are all those policies that seek to promote a general presumption against development. In an article I contributed a few months ago to the Housing and Planning Review, called "A Plague on Presumptions" I sought to explain

why policies including the phrase "a general presumption against" were normally inappropriate and unhelpful. We have been objecting to a number of presumptions policies in plans. I know that authorities have not always understood our concern. Let me take this opportunity to make the position clear.

39. "Presumptions against" policies conflict with the general approach to decision-taking that has applied since Parliament effectively nationalised development rights back in 1947 and delegated to local planning authorities most decisions on whether to return them to landowners. To safeguard the rights of landowners, Parliament provided a right of appeal against refusals of permission, or failure to decide. To provide a basis for those appeals, the General Development Order of 1948 required authorities to give reasons for refusal. In other words the burden of proof rests with the planning authority, and not the developer.

40. PPG1 reiterates, in paragraph 5, this longstanding principle: that the planning system "should operate on the basis that applications for development should be allowed, having regard to the development plan and all material considerations, unless the proposed development would cause demonstrable harm to interests of acknowledged importance". It would be quite wrong to introduce the opposite approach through a policy in a development plan.

41. For these reasons - and with the plan-led system - we are starting to take a firm line against such policies. Only exceptionally does national policy guidance allow "presumptions against". The presumption against inappropriate development in the green belt in PPG 2 is probably the best known example. Only exceptionally should "presumptions against" policies appear in local or structure plans.

42. In any case, policies need to be clear about the developments that will be permitted, if necessary subject to conditions, or the criteria that will apply in decisions.

43. Other policies that are causing problems are those relating to affordable housing - where authorities are trying to set rigid quotas that may well cause them later difficulties on appeal and in the courts. We hope to issue more guidance on the technical aspects of this to help authorities stay within the law. Some authorities are trying to set out in full detail exceptional circumstances in which development might take place in Green Belts. That tends to undermine Green Belt policy, which is nationally very important. We have research under way, and will learn from authorities' difficulties as we review PPG2. We are also intervening in policies that are over-detailed and prescriptive in attempting to control the interior arrangements in dwelling houses.

Good practice

44. I am also of the view that plans contain too much detail. Many contain non land-use policies. One, earlier this year, sought to commit an authority to promote a new law to prevent helicopters deviating from their planned routes. Others seek to determine every planning application before it is received. Some of these plans may reflect the anxiety of the developer to promote full and detailed documentation so as to "win his case" at the first hurdle. Plans are not prescriptive; local plan inquiries should not go into these detailed issues that must be left to be decided in a subsequent application. Excessive detail from any party will simply delay the process, to the disadvantage of all concerned.

45. This sort of sound advice is provided in the local plan inquiry guide prepared by the Chief Planning Inspector and reproduced in PPG12. It is reflected in the good practice guide on plan preparation, published last week.

46. That guide has been prepared by consultants. It is the culmination of two research projects carried out for the Department. It draws on a considerable body of planning experience - of plan makers and plan users. We have sent a

copy to every local planning authority. We hope it will be useful to all those interested in the plan-making process - council members as well as officers, developers, interest groups and members of the public.

47. The guide focuses on four key areas: preparation, content, presentation and implementation. It uses extracts and examples from existing plans to illustrate different aspects of the plan-making process. A series of "pointers" present good practice.

Conclusions

48. This is the final element in the Government's programme to launch the plan-led system. You now have it all: the changes to primary legislation and the new regulations; the new policy advice in PPG12 and PPG1; and the good practice recommendations. We continue to make good progress on our current review of PPGs. You will shortly see six more final versions - of coastal planning, simplified planning zones, tourism, renewable energy, industrial and commercial development and nature conservation. We will be consulting on revisions to PPG6, and early next year, on a revision to PPG2.

49. The challenge now is for planners to make the tremendous effort needed to get the new plans in place. The challenge is for developers, landowners, interest groups and the public to get stuck in and participate in that process. In the Department, we are giving new priority to the scrutiny of all plans, and getting any interventions in on time. We shall also have the novel experience of sitting on the other side of the EIP table, where necessary, to explain the national and regional policy position on issues relating to structure plan content.

50. These are exciting times. It is a privilege for me to have been involved in the process of change over the past couple of years. I believe we have come a long way since what I have called the dark days of Circular 14/85. We have

created the opportunity for planners to show that they can respond to the needs of development and environmental concerns. They must translate the vision of their authority into realistic ambitions, clearly expressed as policies and proposals, capable of application to day-to-day decision making, and sufficiently flexible to remain up to date for at least 5 years. Our economy and our environment depend on the hard work of the planners - and the participation of you all. Let's work together!

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