The Inspectorate, New Procedures: Now and the Future

By David Hanchet[1]

This is not the first time I have spoken at this Conference. The first time was in 1996 when I had just been appointed Deputy Chief Planning Inspector to the Chief, Chris Shepley. Then I spoke, somewhat earnestly about the role of cross examination. In fact I spoke so earnestly about how we are encouraging our Inspectors to intervene to curtail long and repetitive cross examination, to avoid adjournments and to shorten evidence that I am somewhat surprised I was not banished to the category of "Former Contributor" there and then.

In fact the Committee took a very different view and has continued to invite Chris Shepley and I to the event. Indeed this year the invitation has been widened to include our colleagues Rhys Davies, who is based in Cardiff and Bristol (where respectively he is in charge of our work in Wales and on Enforcement); and David Rose who is one of our most "decorated" field Inspectors, and who is currently working in the head office.

Today I am going to be less earnest and I shall try to pull together some of my thoughts on the Inspectorate. For example, how it sits with the Government's Modernising and e-Commerce agendas, the profession's (and here I mean the RTPI) radical new approach to the shape of planning and last, but by no means least, the effect of European legislation, the Human Rights Act and all that.

When I joined the Planning Inspectorate in early 1984, I was then one of the youngest (I was 37) and most junior Inspectors. But now from the relatively lofty position as its Deputy Chief, I believe I am in as good a position as I ever will be to crystallise my thoughts on the job we do.

First, as a fact, it is quasi judicial in nature. But I see that authority and duty being exercised as you would expect from a professional person turned Civil Servant-focused, relevant, unpretentious, user friendly, fair, even handed and without favour. In fact very much the sort of animal which Sir Oliver Franks had in mind in 1957 when he published his report on Tribunals.

Second, since most Inspectors are dedicated professional men and women (some 60 per cent are Town Planners) there has to be an outlet for that professionalism and drive. We genuinely want to continue to develop our professional careers, indeed we must if we are to fulfil our duty as public servants and our duties to the professional organisations and institutes of which we are members. Within the job we do we believe that we are contributing at a senior and highly (you could say individually) responsible level to the proper planning of the country. We care very much about making the right thing happen in the right place at the right time (allowing the appeal) and stopping poor (and worse) development. We care passionately about the provision of jobs, about design, about the countryside, about the familiar and historic environments, about reducing pollution and congestion. I see these as the sort of issues that professional people who deal with matters concerning the environment are likely to be dealing with every day. Indeed I believe they are just the sort of issues which many people consider to be as important to our lives now as well as determining what we leave for future generations to inherit.

Nick Davies, the President of the RTPI, addressing the RTPI Annual Conference in Glasgow in June emphasised the important role of the planning profession. Planners should be at the heart of major

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decisions—not marginalised to routine report writing which could well be left to non-professionals. The President called for ways to get Town Planners working on nationally important issues, such as achieving an urban and rural renaissance, which would test and make proper use of their professionalism, rather than having them spend their days on minor planning applications. The theme, which was well received by delegates, echoed similar calls from other speakers that Planners should not underestimate themselves (or allow themselves to be underestimated) in the contribution they can make to providing a better environment—in all senses of the word.

But these are also important issues which have a political dimension. Should we be wary of that? Perhaps, but even as a student of planning in the early 1970s I had no difficulty with what I saw as the necessary relationship between planning (as a professional subject) and politics. We could discuss for instance whether it was politics or planning that led to the slum clearance programmes of the 60s. Then was it some sort of political provision, or just plain affluence or planning that led to a rise in shopping expenditure and hence supermarkets, hypermarkets, retail warehouses, sheds on the by-pass and new shopping centres outside existing centres? Will it be politicians or planners who will curtail the use of motor cars?

The interconnection between politics and planning is inescapable. They are joined at the hip! On the one hand (if you will allow me to mix hips and hands) they are joined at the Local Planning Authority (LPA) level and, on the other, the national or central Government level. Our LPAs draw up their development plans; the Government issues national policy guidance through Circulars, planning policy guidance notes (PPGs) and so forth. Our law (see section 54A of the Town and Country Planning Act (TCPA) 1990) requires us to have regard to these documents which are handed down from the politicians following advice from their planners and officials. And, curious though it may seem to a passing observer, the same law requires the decision maker (the Inspector at appeal) to give first call to the development plan, thus emphasising the importance of local decisions for the development of an area.

As you will know, there is an interesting new debate going on about this; a debate which the Secretary of State made public in July when he spoke about the Government's commitment to a Green Paper on reform of the planning system and which we expect to see later this year. I will say a few more words about this in a moment. But for now, if I have thus far managed to convince you that I (and I believe the vast majority of my Inspectors) first, believe in the public service side of the job we do and secondly continue to perform as professional people who happen to be doing that job, we are ready to move on to my third point about the Inspector's job, namely how we sit with politics. A potentially more contentious point, a passage into waters which will contain rocks and wrecks and possibly even the odd Rhine maiden.

Let us think of life even before the Human Rights Act had raised the stakes on the Secretary of State as policy maker and decision maker in his own cause. Let us go back to the days when as a young Inspector I was tasked with determining planning appeals for which I was appointed by the Secretary of State, or making recommendations to him (I say "him" because since 1984 all Secretaries of States have been male) because s.78 provides for the right to appeal and the appointment of an Inspector.

Some people have argued that this put me "in the shoes of the Secretary of State" (the "Dolcis principle" for those who remember that shoe chain).

Well in a way it does, but only I would submit, as far as the law would require him (or me, or you or any Inspector) to determine the matter as required by the Act and procedures and within the current planning framework. Therefore I never asked myself what would Mr Ridley, Mr Heseltine, Mr

Gummer or Mr Prescott have wanted me to do but rather I asked myself the more theological question: "what are the relevant land use planning factors, for and against, allowing this development"? The Courts have told us and have confirmed the sort of things they can be, and (currently) starting with the development plan the weight which should normally be attributed to each. Here then is the role of the decision maker: to identify, usually with the benefit of submissions and evidence from the parties to the appeal, the factors (or issues); to rank them; to weigh the pros and cons (the balancing exercise); and to issue a decision, customarily with their reasons for doing so. And to do it all within the statutory framework and rules. Indeed this view has recently been reinforced by the judgment in the *County Properties* case where Lord Prosser said that a Reporter (for the case is a Scottish one) is bound to follow the statutory rules and to follow correct procedures. This compliance is subject to the control of the Court and therefore the inference in the judgment (and I am no lawyer) is that the "independence and impartiality of the tribunal is safe".

I do not think therefore that anything here is particularly controversial and it's mostly time honoured. What we do hear from time to time (and what is certainly more controversial) is that some people feel this process has two competing flaws:

1. that in order to obtain some degree of consistency (they may mean from a more political stand point?) the Inspectorate must give Inspectors "lines" to take on certain situations; and/or
2. without any such safeguards, decision makers are capable of coming to different conclusions.

Rather than debate how we may all feel about these perceived flaws, perhaps the best thing I can do in the time available is to tell you what the Inspectorate does. We do not provide Inspectors with "secret briefings", "party lines to be taken" crystal balls, double headed coins or coded messages. We pride ourselves in providing basic and continuing training so that Inspectors are effective decision makers and alongside that we provide Inspectors with the time and opportunity to familiarise themselves with published national policy and (before they go to an appeal) the prevailing local policy. We do take great care and make every effort to make Inspectors aware of the most up-to-date policies and other published guidance. We also tell them about decisions of the Courts.

We may do this through any of our regular channels. "Inspectors Post" which is sent out weekly will often carry an account of recent High Court decisions, or include a note from me enclosing a new PPG, RPG or Consultation draft. And a service group of the Inspectorate (the Quality Policy and Training Group) is responsible for making sure that source references and key messages covering some of the more commonly occurring issues and types of case, (*e.g.* green belts, rural areas, compulsory purchase orders) are brought together on a topic basis. But I would stress that this is no more than the Inspectorate acting as a central Secretariat to avoid each Inspector (and there are about 300) having to do this individually.

We also issue, as I expect most employers do, information on pay and rations. I feel reasonably confident that it will be of little or no interest to most people outside the Civil Service to know how the Principal Civil Service Pension Scheme is being changed. And I am equally pretty sure that, outside of those who enjoy watching paint dry, there is not likely to be much interest in the finer points of our travel and subsistence code for staff.

So why am I going to such great lengths to tell you all about our internal processes? We know that the House of Lords in *Alconbury* found no harm in the operation of the decision making process. This has been supported in Scotland by the decision in the *County Properties* case. Even those people who are suggesting that the Government should in any case take the initiative and introduce changes to the way

the appeal system is operated, it is usually limited to the decisions taken directly by the Secretary of State. I believe this to be, for example, the position of the RICS who said at one of our meetings with them that they have no concerns over the impartiality of decisions taken by Inspectors; their interest in change was at the recovered and call in end where decisions are taken by the Secretary of State. Therefore in a world of appeals that contains some 15,000 decisions a year, only about 300 of which are not taken by Inspectors, it will be apparent that you do not have to change the Inspectorate radically even to accommodate a degree of change at this level. However, let us remind ourselves that for the purposes of *Alconbury* and the Inspectorate, it's "business as usual" and my Inspectors are free to continue to make decisions (as is the Secretary of State) in the way I have previously described. And, in my opinion, there's nothing wrong in that.

I said that I would return to the Green Paper. It seems clear that the Government sees this as an opportunity not only to continue with its work on some of the important planning topics on which it has already put in a considerable amount of work—things like sustainable development, quality of design, historic environment, and preserving the countryside—but also, and in particular, to look at the processes.

And a high priority on the process side is to make the system work effectively and efficiently. Alongside calls for the process to work quickly, fairly and predictably, it is clear from the Secretary of State's speech on July 26, to the Institute of Public Policy Research that he wants planning to engage communities and to have a system which will make people feel better connected with the process of Government. For the inquiry process there were a number of messages:

1. We need to stress that they are *public* inquiries and they must involve local people not intimidate them.
2. They must engage people, not "starve" local people of the opportunity to express their views.

The Green Paper will look specifically at development plans, asking questions about the need for the present multi-tiered structure. Indeed is the present system so unwieldy and slow to change as to frustrate the effort to get the country covered by plans which can be relied upon to provide an up-to-date view of opportunities and restrictions for an area, in balance with economic pressures and integrated with other local strategies?

From our point of view in the Planning Inspectorate, whilst accepting that the predominance given to development plans by s.54A necessitates that nationally we have a comprehensive coverage of up-to-date plans, the present system is excessively time consuming, especially of Inspector time. Holding and reporting on development plan inquiries this year represents about 14 per cent of our work. And even as Inspectors hold development plan inquiries, they are conscious that the plan process has probably taken too long in the preparation stages for it to have much useful life left before the review takes place. One can only hope that when the plan requires review the LPA will not set everything aside and start completely afresh, but will concentrate, selectively, on areas ready for change.

A similar point can be made about the relationship between national policy (through PPGs, etc.,) and local or other development plans. In my experience most LPAs are content to rely on national policy guidance as the backbone of their own development plans. This means that either they do not need to recite national policy (for example well understood policies for Green Belts) or, if they do, it can be largely left to one side in the inquiry into objections to the plan.

Clearly there is an ongoing debate about the relationship between national and local policy. It is tempting to say that national policy is the one that is more likely to get in the way of engaging local

people in the development of their own area and which has the propensity to straightjacket local democracy. But the other side of the coin is that without some national or strategic guidance, local decisions could be accused of non-joined up "Nimbyism"; and that a number of processes (and in particular the inquiry process) would take a lot longer as other (probably wider) issues were introduced.

On balance I think we need more direct and specific national guidance on some forms of development—especially where this is major, complex or sensitive. To take some extreme examples to, I hope, make the point: if we have clear policies and objectives for airports, ports, freight terminals, new settlements and so forth, the work at the essentially land use planning inquiry will be eased and simplified. That would probably benefit local people who would be better able to engage with the types of issues being raised.

As I say the debate on Reforms to the Planning System go on. Speaking about 10 days ago at the Planning Summer School (formerly the Town and Country Planning Summer School) in Exeter the Planning Minister, Lord Falconer, echoed his Secretary of State's messages on reform.

He identified some points which you might like to consider:

- He suggested better focused planning policy guidance notes with less umbrella detail.
- Further improvement to the quality of regional planning so that we can rely on it more and benefit from greater "regional diversity".
- On development plans he found them slow to change as they are in their production. He expressed an interest in moving away from the monolithic plan that treats all the area the same towards a more strategic, policy-led approach, with detailed plans only being produced where needed.
- On achieving greater success in delivering quicker decisions on planning applications he lumped together for a closer look the work of Local authorities, together with the role of the Secretary of State, the Government offices and the Department.
- He made specific reference to planning obligations saying that the operation of s.106s will be part of the Green Paper "Package".
- Section 106s were vital in the role to provide housing as set out in PPG 3. All s.106s will be on the Planning Register. He said "I can see no justification whatsoever for treating s.106 agreements as hidden deals done in smoke filled rooms".
- On a wider issue he posed the question that s.106s may be able to cover a wider range of benefits for the community or whether they should incorporate a system of "impact fees" designed to reflect the full environmental costs a developer generates.
- There will be too a separate review of the CPO system so that local authorities are better able to assemble land for brownfield development and urban regeneration.
- He concluded:

  "The Planning Green Paper, along with proposals for planning for major infrastructure projects, guidance on the use of CPO powers and options for improving planning obligations adds up to a thorough spring clean of our planning system".

This leads me to think about the inquiry process itself and how efficient and user friendly it is. In the Inspectorate our foundation has always been the Franks Report of 1957 which, as well as introducing those three guiding stars of "openness, fairness and impartiality", said that an inquiry should "combine formal procedure with an informal atmosphere". Particularly over the last five or six years we have been encouraging our Inspectors to be more proactive, setting out, where possible at the beginning of the inquiry or hearing, the issues as they see them and driving the inquiry on by curtailing unnecessarily

lengthy and repetitive evidence or cross examination. In all of this we have been helped by the professional institutions including the Law Society, the RICS and PEBA, who as well as endorsing and supporting the concept of "the Pro Active Inspector", have worked with us on initiatives such as submitting time estimates for evidence and submissions, and taking a fresh look at the length of the inquiry day on Fridays. We now look to individual advocates and witnesses to put this into practice and, just so that they are not left out, we will be contacting all Inspectors again to remind them to re-read and be sure to act upon the advice and instructions already given.

All of this seems to be very much in line with the Secretary of State's view that inquiries should, as far as possible, be pitched so that unrepresented local people can participate, understand and follow the evidence without feeling intimidated.

Over the last few months we have been testing our proposal that advocates should be seated when cross examining witnesses. The point was put to us, and we generally agree, that if the exchange takes place (literally) on the level then no one side has an immediate advantage and, conversely, neither of them is at an immediate disadvantage.

I can therefore tell the Conference that we are writing to all Inspectors to tell them that it will now be normal practice at Planning Inquiries that advocates are seated when they cross examine or put questions to the witness. Inspectors will be able to vary this only exceptionally, for example, where the acoustic qualities or layout of the room necessitate. Advocates will continue to stand up when making submissions to the inquiry or addressing the Inspector. We will review this in a year or so and will be interested to receive any views that are made during or at the end of that period.

We are currently reviewing the Appeals Procedure changes made last year. From a relatively slow start (in terms of complying with deadlines) I am pleased to say that, over the year, things have got decidedly better. We still feel two areas need to be worked on but we are proposing to allow some more time before we suggest moves to enforce compliance:

1. In written representation procedures some parties are failing to submit a six week statement but, when they have seen the other side's statement they try to dress their's up and submit it under the guise of a nine week statement.
2. In inquiry cases some parties are "going behind" the rules and are exchanging late proofs so that the only person at the inquiry without them may be the Inspector. In such cases there seems to be an "agreement" that claims for cost will not be made even if the Inspector has to adjourn to read the proofs. This is patently not acceptable and perhaps we shall have to seek legislation that either allows for "fines" or for the Inspector to award costs against either or both parties on his (or her) own initiative.

I began by talking about the development of the Inspectorate. I want to end on a very positive electronically upbeat note, tell you about the future and mention the Planning Portal Project.

The Planning Inspectorate is leading a programme of work to develop e-Business systems in support of the Modernising Government agenda and associated targets. The programme is being funded from the Capital Modernisation Fund and consists of two main projects:

1. The Planning Portal will be a general planning advisory service linking the public, business and other users of the planning system to a wide range of advice, guidance and services on planning and related topics. The service will be accessed via a single managed Internet portal that will link all relevant organisations, and will itself be linked to U.K. Online.
2. The Casework Service will be an electronic planning casework document handling and

tracking facility. It is intended to automate the links between the Planning Inspectorate and applicants/appellants, local planning authorities, Government Offices, Department for Transport, Local Government and the Regions, the National Assembly for Wales and other interested parties. It will provide direct access to progress and decision information on the 20,000 or so cases handled by the Planning Inspectorate each year. The service will be one of those available via the Planning Portal.

A paper-based service will continue to be available for those people and organisations who prefer not, or are unable, to use/access the electronic service. However, a key objective of the programme is to make the electronic service sufficiently attractive to persuade customers to use it, and continue to use it, in preference to the paper-based service.

This Website is intended to inform everyone with an interest in planning matters and to give the opportunity for comment, either directly or via a representative on one of the project teams which is overseeing the development of the two schemes. A regular newsletter will detail the progress of the Programme.

A number of organisations will work in collaboration, including those wishing to provide services via the portal. We would be very interested to hear from you should your organisation or company be interested in collaborative working. Please feed comments on the planning portal to: *pso@planning-inspectorate.gsi.gov.uk* or through our website: *www.planningportalprogramme.gov.uk*.

The Portal will be launched in January 2002, with further services being added throughout the year, bringing in central and local government by autumn 2002.