

Foreword

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A controversial moment

The 2011 JPLC took place at a moment of anticipation and controversy. Ahead lay the Localism Act and the passage of the National Planning Policy Framework (“NPPF”), the combined effects of which still promise far-reaching change to the planning system. More immediate was a sudden tempest of media interest in planning, much of which sought to unmask the draft NPPF as a developers’ charter which would seal the fate of the Green Belt, rather than embodying the promise made in *Open Source Planning* to devolve power over local planning to the local and neighbourhood levels.

It was fitting therefore that John Howell OBE MP gave the Conference’s keynote speech on Friday evening. He was the principal author of the Conservative Party’s pre-election document *Open Source Planning*, and he made it clear that the Government’s intention to devolve power and responsibility within the system remains firm in the face of challenge. Mr Howell was taxed by delegates about the processes involved in the proposed reform, and the outcomes: how was the concept of “sustainable development” to be defined so as to be useable in a policy-presumption; and how, if power over planning was to trickle down through the strata of civil society, would the housing drought be relieved? It was an intriguing part of Mr Howell’s responses that he saw a central role—perhaps the central role—in both policy-definition and housing delivery as carried out by the stakeholders in the system, rather than by central government.

The papers presented to the conference focus on controversial aspects of the proposed reforms: Hugh Bullock’s contribution surveys the ideological landscape of Localism, and sets it against the challenge presented by the recessionary economic climate. Robert Gordon Clark’s paper explores the fluid new relationships which appear destined to emerge in the age of neighbourhood planning, whilst Paul Rogerson’s work identifies the need for strategic-level planning even during the current “turn to the local”. Jenny Rowlands and Anthony Zacharewski give a suitably decentralised exposition of the way that roles and practices are likely to have to change in order to facilitate a style of planning which genuinely involves local people. Peter Head’s paper looks beyond the local to the global challenge of carbon-reduction, and includes some instructive early examples of retro-fitting local neighbourhoods with green technology. Paul Tucker QC’s legal update paper reflects the changes in the legal control over planning in the year to September 2011.

Two main substantive themes, or perhaps concerns, are detectable in these separate approaches to the proposed reform: complexity and indeterminacy.

Complexity

Given the sclerotic regulatory environment in which planning occurs, legislative changes aimed at simplifying the system and making it more accessible to local people cannot simply blast away the existing structures. The Localism Act is likely to be a complex piece of machinery, designed to re-balance a difficult process, and it will carry within it multiple opportunities for legal challenge. The potential result may be to turn the promise of control by locals into a frustrating mirage; one outcome is that the process may become less, rather than more, accessible to locals.

In that regard, Hugh Bullock draws attention to the complexities of the proposed Neighbourhood Development Order procedure. In addition to lacking democratic accountability, the procedure is likely to be subject to supervision by the Planning Inspectorate (testing the “soundness” of a NDO) and by the local planning authority, with whose Local Plan or Core Strategy the NDO must generally accord in order

to be declared “sound”. Hugh Bullock draws a similar conclusion in relation to local referenda—cll.47 and 49 of the Localism Bill appear to limit the scope of referenda and place the keys to the lock in the hands of the local planning authority. Since the referenda may well be an act of local rebellion against the local planning authority’s actions, it is questionable whether the referenda system will deliver new local solutions or create bitter divisions at the local level and a record level of frustration with the process as a whole.

Paul Rogerson drew attention to the plan-making role still to be undertaken by the local planning authority, including through “local economic co-operation” at the city-region level. Most participants in planning recognise the need for strategic issues to be determined, or at least considered, at a supra-local level. However, this runs counter to the prevailing mood of Localism; Robert Gordon Clark observes that “token localism” is a potential problem of the new system, particularly in London, as the players become more adept at fitting their traditional axes to the newly-fashioned grindstone.

The opportunities afforded by the new system will be manifold but they may not always lead to local planning. The plea by Jenny Rowlands for planners within local planning authorities to be allowed to enable the participation of those working at the grassroots level, rather than flinch constantly in the cross-fire between the local residents of their area and the elected representatives, identifies a possible improvement that the new arrangements might bring. On the other hand, the local authority is the seat of much of the governance within the new system, and planners will surely not be able to evade—or be seen to evade—making the tough decisions when opposing viewpoints cannot be reconciled.

Peter Head draws on his truly global practice to discern some opportunities for action at the local level towards the reduction of carbon use, but again the picture is not clear-cut. The costs of retro-fitting existing neighbourhoods are very substantial, as his examples show. Against the severity of the problem which faces the environment, the engagement of local people with the planning system might appear to be a luxury that we cannot collectively afford; in any event, the papers give a clear insight into the potential opportunities and frustrations that the new system might hold for local people.

Indeterminacy

The likely thrust of the final NPPF will be towards a system that prioritises growth through sustainable development. As yet, no workable definition of that term has emerged in the Bill or the draft NPPF. Due to the continued primacy of the plan-led system, through s.38(6) of the Planning and Compulsory Purchase Act 2004, the concept of sustainable development is the master key to the plan and to particular planning applications which may not be in accordance with an up to date plan. As Lord Bingham, in *The Rule of Law*, recounts, Alan Greenspan’s view is that the rule of law is the most important factor in stable economic growth. If that is so, indeterminacy as profound as that which currently surrounds the notion of sustainable development is unlikely to provide the certainty needed for growth.

The role of the professionals

A third theme emerges in the papers—the changing roles of the professional planner, surveyor or lawyer within the planning process. John Howell politely distanced himself from the now-traditional political call for lawyers to be excluded, as far as possible, from the process; given the ominous profusion of clauses in the Localism Bill, that would have been an untenable position in any event. Something more nuanced, however, could be seen at work in the presentations by Jenny Rowlands and Robert Gordon-Clark. Both stressed that the legitimacy of the system depends on its perceived success in mediating between different interest-groups in the use of scarce resources. They observed that society has grown distrustful of the mediators in their current roles, and new approaches are almost certainly required. Again, the papers of Paul Tucker QC and Peter Head remind us that there are some aspects of the planning world where greater

accessibility cannot provide a substitute for professional expertise. If the professions are to lead the fight for a low-carbon economy, and a legal system ensuring that planning disputes are resolved fairly, then no defeatism can be admitted.

Planning—short term politics or long-term policy?

Taken together, the papers presented to the 2011 JPLC provide a set of predictions for the years ahead. It will be interesting to observe whether the Government's remodelling of planning policy enables or restricts growth, for instance. Hugh Bullock remarks that the de-regulation of the system in line with laissez-faire economic ideas has traditionally formed part of Conservative policy, but in its latest incarnation, is there a suspicion that the notion of local empowerment, having satisfactorily discharged its political task of distancing the Coalition from (its characterisation of) Labour policy, might be sacrificed to the blunt need for economically-productive development? The 2011 JPLC papers provide many useful clues to whether that suspicion will be borne out over the coming few years. The Committee joins me in thanking the contributors for their excellent work.